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A

PRACTICAL DIGEST
OF THE
ELECTION LAWS.

BY ROBERT ORME,
OF THE INNER TEMPLE.

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P R E F A C E.

THE acts of parliament and resolutions of the house of commons, relating to the law of parliamentary election, are now become so numerous, and the cases decided by select committees appointed under the late Mr. Grenville's act, fill so many volumes of reports, that an apology for a digest, drawn from these sources and adapted to practical use, will not, it is presumed, be required.

The want of such a compilation was productive of considerable inconvenience at the last general election, and in the subsequent committees. A share of that inconvenience fell to the Editor, and was the occasion of the labour which has produced this publication. It was directed to no other object than that of being useful to himself, and affording instructive amusement for his leisure hours. But, influenced by the persuasion of his friends, and

the reflection that his industry would be more happily exerted, if at the same time it could be rendered useful to others, he has been induced to enlarge his plan, and endeavour to make it acceptable to the public. Although the undertaking has required the sacrifice of more time, than he originally conceived would have been necessary to devote to it, and consequently occasioned some inconvenience to himself; yet he has spared neither pains nor time, to render the work complete and accurate to the extent of his design.

The Reader will perceive, that all the clauses of the statutes and resolutions of the House, immediately relating to the subject, are given in the words in which they were framed, being, in the Editor's opinion, of too much consequence to be trusted to any abridgment; but, of those clauses which relate to the manner of recovering penalties, as being of little use at an election, or in a committee room, the substance only is given.

The resolutions of committees, are generally in the words in which they are reported; but, in order to compress the work within a moderate size, the statements of the cases, and arguments of counsel

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fel leading to the decisions, are abridged. Should, however, any of those statements appear unsatisfactory, the Reader will find references in the margin to the reports, where the cases themselves may be consulted.

The whole is arranged in the order in which the several branches of the subject seemed to the Editor most obviously to occur; and in a mode which he hopes, will, with the aid of marginal notes and the Index, render it easy of reference.

In the Appendix, is a variety of useful precedents in all matters relative to the subject of the work; together with the whole of the acts of the 2 *Geo. 2. cap. 24.* against bribery, and the 3 *Geo. 3. cap. 15.* to prevent occasional freemen; the former being directed to be read at *every* election, and the latter at such, where the right of voting is in the whole or in part in freemen: And such parts of the acts for regulating elections in London, Norwich, and Coventry, as relate to the elections of members to parliament, are also subjoined.

Being unacquainted with the Scotch laws, the Editor has omitted the statutes,

and the cases and questions which have arisen on the laws of election peculiarly applicable to that part of the kingdom.

The Editor would be wanting in candour, not to acknowledge the assistance he has derived from Mr. Serjeant Heywood's digest of the law respecting county elections, and Mr. Simeon's treatise. He is also much indebted to Mr. Douglas and Mr. Luders, for the valuable and judicious notes given to the cases they have reported.

Inner Temple,
24th March. 1796.

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☞ The chasm in the numeration of the pages from 320 to 337 was occasioned by a division of the MS., and sending the latter part to press before the first part was in sufficient forwardness to ascertain the number of pages it would require; but, as the references in the Index are correct, no inconvenience can arise from it.

ELECTIONS IN GENERAL.

- I. Of issuing writs on a general election.*
- II. Of issuing writs on a vacancy during the sitting, or recess of parliament.*
- III. Of the freedom of elections.*
- IV. Of persons prohibited from interfering at elections.*

I. Of issuing writs on a general election.

ON summoning a new parliament, a warrant issues to the lord chancellor by the advice of the privy council, signed by the king; commanding the chancellor to cause so many writs to issue under the great seal, as have been usual and customary for the purpose of calling a parliament. Hereupon the writs are accordingly made out by the clerk of the crown in chancery, and by the 7 & 8 W. III. c. 25. 7. & 8. W. III. c. 25.

f. 1. "When any new parliament shall at any time hereafter be summoned or called, there shall be forty days between the teste and returns of the writs of summons; and that the lord chancellor, lord-keeper, or lords commissioners

To be 40 days between the teste and return of the writ.

ELECTIONS IN GENERAL.

To be issued with
expedition,

and delivered to
the proper of-
ficer.

of the great seal for the time being, shall issue out the writs for election of members to serve in the same parliament, with as much expedition as the same may be done; and that as well upon the calling or summoning any new parliament, as also in case of any vacancy, during this present or any future parliament, the several writs shall be delivered to the proper officer to whom the execution thereof doth belong or appertain, and to no other person whatsoever.”*

II. Of issuing Writs on a vacancy during the sitting or recess of Parliament.

D'Ewes 307,
308.

WHENEVER a vacancy happens by death or otherwise, and the same is notified to the house by the motion of any member thereof, the Speaker issues an order to the clerk of the crown for making out a new writ, agreeably to the following resolution of the house of the 18th of March 158^o. viz. “That during the sitting of this court, there do not at any time, any writ go out for the chusing or returning of any knight, citizen, burgess or baron, without the warrant of this house first directed for the same to the clerk of the crown, according to

* There is now a bill pending in parliament to regulate the delivery of writs, which, if it passes into a law before this work is published, will be added to the appendix.

the ancient jurisdiction and authority of this house in that behalf accustomed and used."

But, where a vacancy happens by the death of a member, or his becoming a peer of the realm, during the recess of parliament, provisions are made for issuing writs by the 24 *Geo. III. c. 26*.*

The second section whereof enacts, "That it shall and may be lawful for the speaker of the house of commons for the time being, during any recess of the said house, whether by prorogation or adjournment, and he is hereby required to issue his warrant to the clerk of the crown, to make out a new writ for electing a member of the house of commons in the room of any member of the said house who shall happen to die, or who shall become a peer of Great Britain, either during the said recess, or previous thereto, as soon as he shall receive notice, by a certificate, under the hands of two members of the house of commons, of the death of such member, in the first case; and in the second case, that a writ of summons hath been issued, under the great seal of Great

24. G. III. c.
26.

Speaker to issue his warrant, during a recess, for making out writs for electing members in the room of those who shall die or become peers of Great Britain.

* Previous to this act, regulations had been made respecting the issuing writs during a recess, by the 10. *Geo. III. c. 41.* and the 15. *Geo. III. c. 36.* but other provisions being necessary, it was thought best to repeal those two acts, and consolidate the whole in one, which was accordingly done by the above act of the 24. *Geo. III.*

† But if the return of such member has been petitioned against, and is undetermined, it seems that till the determination of the committee, no writ can issue, for if it should turn out that such dying member was not duly elected, then his death has occasioned no vacancy. 1. *Doug. 462.*

ELECTIONS IN GENERAL

Britain, to summon such peer to parliament; which certificate may be in the form, or to the effect, comprized in the schedule hereunto annexed.*

Certificates of vacancies to be notified in the Gazette.

3. "That the speaker of the house of commons shall forthwith, after his receiving such certificate, cause notice thereof to be inserted in the London Gazette, and shall not issue his warrant until fourteen days after the insertion of such notice in the Gazette."

Certain restrictions on the speaker relative to issuing his warrant.

4. "That nothing herein contained shall extend to enable the speaker of the house of commons to issue his warrant for the purposes aforesaid, unless the return of the writ (by virtue of which such member deceased, or become a peer of Great Britain, was elected) shall have been brought into the office of the clerk of the crown, fifteen days at the least before the end of the last sitting of the house of commons immediately preceding the time when such application shall be made to the speaker of the house of commons, to issue such warrant as aforesaid, nor unless such application shall be made so long before the then next meeting of the house of commons for the dispatch of business, as that the writ for the election may be issued before the day of such next meeting of the house of commons; nor in case such application shall be made with respect to any seat in the house of commons which shall

* Vide this certificate in the appendix.

have been vacated in either of the methods before-mentioned, by any member of that house against whose election or return to serve in parliament a petition was depending, at the time of the then last prorogation of parliament, or adjournment of the house of commons."

5. "And whereas the due execution of this act may be prevented or impeded by the death of the speaker of the house of commons for the time being, or by his seat in parliament becoming vacant, or by his absence out of the realm, for which inconveniencies it is expedient to provide a remedy; be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the present speaker of the house of commons, and he is hereby required, within a convenient time after the passing of this act, and for every future speaker of the house of commons, and he is hereby required within a convenient time after he shall be in that office, at the beginning of any parliament, by any instrument in writing under his hand and seal, to nominate and appoint a certain number of persons, not more than seven, nor less than three, members of the house of commons at the time being, thereby authorising them, or any one of them, to execute all and singular the powers given to the speaker of the house of commons for the time being, for issuing such warrants as aforesaid, by virtue of this act, subject nevertheless to such regulations

Speaker to authorise a certain number of members of the house of commons to execute the powers given to him by this act.

and exceptions as are herein also contained; which instrument of appointment and authority shall, notwithstanding the death of the speaker of the house of commons making and executing the same, or the vacating his seat in parliament, continue and remain in full force until the dissolution of the parliament in which it shall be made."

When such number shall be reduced to less than 3, a new appointment to be made.

6. "That whenever and as often as the said number of persons, so to be appointed as aforesaid, shall, by death, or by their seats in parliament being vacated, happen to be reduced to less than three, it shall and may be lawful for the speaker of the house of commons for the time being to make a new appointment in the manner herein-before directed."

Appointments to be entered in the journals of the house, and published in the Gazette.

7. "That every such appointment shall be entered in the journals of the house of commons, and be also published once in the London Gazette; and the instrument of such appointment shall be preserved by the clerk of the house of commons, and a duplicate thereof shall be filed in the office of the clerk of the crown in chancery."

In what cases only such persons are empowered to act.

8. That nothing in this act contained shall extend, or be construed to extend, to give any power or authority whatsoever to any person so to be nominated and appointed as aforesaid, except in the case of there being no speaker of the house of commons, or of his being absent out of the

the realm, nor for any longer time than such person, so to be appointed as aforesaid, shall continue a member of the house of commons; any thing herein contained to the contrary notwithstanding."

9. "That the publisher of the Gazette for the time being, when any such notice as aforesaid of the issuing of any such warrant shall be brought to him, signed by any person so appointed as aforesaid, shall give a receipt for the same, specifying the day and hour when the same was received; and in case more than one such notice shall be brought to him, relative to the same election, such publisher shall insert in the Gazette only the notice first received."

Publisher of the Gazette to give receipts for notices.

III. Of the freedom of elections.

3. Ed. 1. c. 5. "And because elections ought to be free, the king commandeth upon great forfeiture, that no man by force of arms, nor by malice, or menacing, shall disturb any to make free election." And the declaration of rights directs, "that all elections of members of parliament ought to be free." *

3. Ed. 1. c. 5.

1. W & M. sess. 2. c. 2.

"By the ancient common law of the land all elections ought to be free." "And forasmuch as

18. G. II. c. 30.

* Formerly the lord warden of the cinque-ports claimed a right to nominate and recommend a member to be elected for each of the cinque-ports and two ancient towns; but the 2. Will. & Mary, sec. 1. c. 7. declares such nominations and recommendations illegal and void.

ELECTIONS IN GENERAL.

the freedom of elections of members to serve in parliament, is of the utmost consequence to the preservation of the rights and liberties of this kingdom ;” an infringement of that freedom by actual violence, avoids the election.

What avoids elections.

1. Doug. 293.

Riots.

Bribery.

There are many cases in the journals, where the house have held riots to avoid elections. In the case of Cricklade, the committee declared the election void, where the returning officer, on the second day of the election, was prevented completing the poll by means of a riot.

On the same ground, bribery has often been the cause of avoiding elections, even previous to the treating act.

S. G. II c. 30.

Soldiers.

To guard still more this pillar of the constitution, the house in 1645, resolved, “ That all elections of any knight, citizen, or burghers, to serve in parliament, be made without interruption by any commander, governor, officer, or soldier, that hath not in the county, city, or borough respectively, right of electing.” “ And whereas it hath been the usage and practice to cause any regiment, troop or company, or any number of soldiers, which hath been quartered in any city, borough, town or place, where any election of members to serve in parliament, hath been appointed to be made, to remove and continue out of the same during the time of such election : To the end therefore that the said usage and

ELECTIONS IN GENERAL.

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and practice may be settled and established for the future," the 8. Geo. 2. c. 30. s. 1. enacts,

" That when and as often as any election of any peer or peers to represent the peers of Scotland in parliament, or of any member or members to serve in parliament, shall be appointed to be made, the secretary at war for the time being, or in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall, and is hereby required, at some convenient time before the day appointed for such election, to issue and send forth proper orders in writing for the removal of every such regiment, troop, or company, or other number of soldiers as shall be quartered or billeted in any such city, borough, town, or place, where such election shall be appointed to be made, out of every such city, borough, town or place, one day at the least before the day appointed for such election, to the distance of two or more miles from such city, borough, town, or place, and not to make any nearer approach to such city, borough, town, or place as aforesaid, until one day at the least after the poll to be taken at such election shall be ended, and the poll-books closed."

On election of a member, the secretary at war, or person acting as such, to send proper orders in writing for the removing soldiers 2 miles from the place of election.

2. " That in case the secretary at war for the time being, or such person who shall officiate in the place of the secretary at war, shall neglect or omit to issue or send forth such orders as aforesaid, according to the true intent and meaning of

ELECTIONS IN GENERAL.

of this act, and shall be thereof lawfully convicted upon any indictment to be preferred at the next assizes, or sessions of oyer and terminer to be held for the county where such offence shall be committed, or on an information to be exhibited in the court of king's bench within six months after such offence committed, such secretary at war, or person who shall officiate in the place of the secretary at war, shall for such offence be discharged from their said respective offices, and shall from thenceforth be utterly disabled, and made incapable to hold any office or employment, civil or military, in his majesty's service."

On the penalty
of forfeiting his
office, &c.

3. "That nothing in this act contained, shall extend or be construed to extend to the city and liberty of Westminster, or the borough of Southwark, for and in respect of the guards of his majesty, his heirs or successors, nor to any city, borough, town, or place, where his majesty, his heirs or successors, or any of his royal family shall happen to be, or reside at the time of any such election as aforesaid, for or in respect of such number of troops or soldiers only as shall be attendant as guards to his majesty, his heirs or successors, or to such other person of the royal family as is aforesaid, nor to any castle, fort, or fortified place, where any garrison is usually kept, for or in respect of such number of troops

Not to extend to
Westminster, or
other place of re-
sidence of the roy-
al family, &c.

Or to fortified
places.

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troops or soldiers only whereof such garrison is composed." *

4. " That nothing in this act contained, shall extend, or be construed to extend, to any officer or soldier who shall have a right to vote at any such election as aforesaid, but that every such officer and soldier may freely and without interruption attend and give his vote at such election; any thing herein-before contained to the contrary thereof notwithstanding."

Or any officer,
&c. having a right
to vote at such
election.

5. " That the secretary at war, or in case there shall be no secretary at war, then such person who shall officiate in the place of the secretary at war, shall not be liable to any forfeiture or incapacity for not sending such order as aforesaid upon any election to be made of a member to serve in parliament on a vacancy of any seat there, unless notice of the making out any new writ for such election shall be given to him by the clerk of the crown in chancery, or other officer making out any new writ for such election, which notice he is hereby directed and required to give with all convenient speed after making out the said writ."

The secretary at
war, &c. not li-
able in case of
vacancy unless
notice of the writ
be given by the
clerk of the
crown.

* In the last war a number of French and Spanish prisoners were confined at Winchester, where the elections for Southampton were usually held, and it being thought dangerous to leave the place without a military guard, an act of parliament passed directing the elections for the county of Southampton to be begun and held at New Alresford, and from thence adjourned to the Isle of Wight during the war. 26. Geo. III. c. 1.

Sub-

24 Journ. 37.

Subsequent to the passing this act (viz. 22d Dec. 1741) it appearing to the house, "That a body of armed soldiers, headed by officers, did on Friday the 8th day of May last come in a military manner and take possession of the church-yard of Saint Paul, Covent-garden, near the place where the poll for the election of citizens to serve in this present parliament for the city of Westminster, was taken before the said election was ended." They thereupon passed a resolution, "That the presence of a regular body of armed soldiers at an election of members to serve in parliament, is an high infringement of the liberties of the subject, a manifest violation of the freedom of election, and an open defiance of the laws and constitution of this kingdom."

IV. Of persons prohibited from interfering at elections.

Lords of parliament, &c.

No lord of parliament, or lord-lieutenant of any county to concern themselves in elections.

3 Doug. 255.

"IT is a high infringement of the liberties and privileges of the commons of Great Britain, for any lord of parliament, or any lord-lieutenant of any county, to concern themselves in the election of members to serve for the commons in parliament." The house pass a resolution to this effect at the commencement of every session, and the committee, in the case of Worcester, held themselves bound by their oath, to take cognizance of the interference of a peer, it being specially

cially complained of; though it was said the complaint ought to have been carried before the committee of privileges.

So, "it is highly criminal in any minister or ministers, or other servants under the crown of Great Britain, directly or indirectly, to use the powers of office in the election of representatives to serve in parliament, and an attempt at such influence will at all times be resented by this house, as aimed at its own honour, dignity and independency, as an infringement of the dearest rights of every subject throughout the empire, and tending to sap the basis of this free and happy constitution."

Ministers, &c.
37. Journ. 507.

And, "the sending of warrants, or letters in the nature of warrants, or letters to high constables, or constables or other officers, to be communicated to freeholders or other electors, when a knight of the shire or other member is to be chosen to serve in parliament, or threatening the electors, is unparliamentary, and a violation of the right of election."

9. Journ. 191.

"To the end the great duties of excise, and the powers given for the collecting and levying the same, may not be employed for the influencing of elections of members to serve in parliament, which elections, by the constitution of this government, ought to be free and uncorrupt;" it is enacted by the 5. *Will. & Mary*, c. 20. §. 48. "That no collector, supervisor,

Excise Officers.
5. W. & M. c.
20.

gauger

Not to persuade
to the choice of
members.

ELECTIONS IN GENERAL.

gauger, or other officer, or person whatsoever concerned or employed in the charging, collecting, levying, or managing the duties of excise or any branch or part thereof, shall, by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any person to be a knight of the shire, citizen, burgess, or baron of any county, city, borough, or cinque port, to serve in parliament."—Persons offending forfeit one hundred pounds, one moiety to the informer, the other to the poor of the parish, to be recovered by any person that shall sue for the same; and every person convicted, is incapable of ever executing any office relating to the duty of excise, or any other office or place of trust.

Penalty.

Officers of the
customs.

12. & 13. W.
III. c. 16.

Not to influence
any election of
members.

And by the 12 & 13. *Will. 3. c. 10. s. 91.*
"No commissioner, collector, comptroller, searcher, or other officer, or person whatsoever, concerned or employed in the charging, collecting, levying, or managing the customs, or any branch or part thereof, shall by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or dissuade any elector from giving his vote for the choice of any person to be a knight of the shire, citizen, burgess, or baron of any county, city, borough, or cinque port to serve in parliament."

de-

ELECTIONS IN GENERAL.

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Under the same penalty and disability, as in the preceding statute. Penalty.

By the 9. *Ann. c. 10. f. 44.* "No postmaster or postmasters general, or his or their deputy, or deputies, or any person employed by, or under him or them, in the receiving, collecting, or managing the revenue of the post office, or any part thereof, shall by word, message or writing, or in any other manner whatsoever, endeavour to persuade any elector to give or dissuade any elector from giving, his vote for the choice of any person to be a knight of the shire, citizen, burghess, or baron of any county, city, borough, or cinque port, to serve in parliament," under the same penalty and disability as in the preceding statute.

Officers of the post-office.

9. A. c. 10.
Not to intermeddle in elections.

Penalty.

By the 9. *Ann. c. 11. f. 49.* "No commissioner, officer, or other person, concerned or employed in the charging, collecting, receiving, or managing any of the duties granted by this act, [upon hides, skins, tanned, vellum, &c.] shall by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for his choice of any person to be a knight of the shire, commissioner, citizen, burghess, or baron, for any county, city, borough, or cinque port," under the same penalty and disability as in the preceding statutes.

Revenue officers.

9. A. c. 11.
Commissioners, officers, &c not to intermeddle with elections.

Penalty.

And by the 10. *Ann. c. 19. f. 182.* "No commissioner, officer, or other person, concerned

10. A. c. 19.

ELECTIONS IN GENERAL.

Penalty.
The commissioners and officers appointed by this act not to intermeddle with elections.

Penalty.

cerned or employed in the charging, collecting, receiving, or managing any of the duties granted by this act, [on soap, paper, candles, stamped vellum, &c.] shall, by word, message, or writing, or in any other manner, endeavour to persuade any elector to give, or dissuade any elector from giving, his vote for his choice of any person to be knight of the shire, commissioner, citizen, burgess, or baron, for any county, city, borough, or cinque port," under the same penalty and disability as in the preceding statutes.

ELEC.

ELECTIONS FOR COUNTIES.

I. Of the duty of the sheriff on receipt of the writ, and previous to the election.

II. Of the proceedings at the election.

III. Of the return.

I. Of the duty of the sheriff on receipt of the writ, and previous to the election.

BY the 23. *Hen. VI. c. 14.* " Every sheriff, after the delivery of any such writ [to make election of knights to come to parliament] to him made, shall make and deliver without fraud a sufficient precept *, under his seal to every mayor and bailiff, or to bailiffs or bailiff where no mayor is, of the cities and boroughs within his county, reciting the said writ, commanding them by the same precept, if it be a city, to choose by citizens of the same city, citizens; and in the same manner and form if it be a borough, by the burgesses of the same to come to parliament."

Issuing precepts.

23. *H. VI. c. 14.*

Whats the precept is to contain.

The 7 & 8 *Will. VI. c. 25. s. 14.* after directing that the writs shall be delivered to the proper officer only, enacts, " That every such

7. & 8. *W. III. c. 25.*

* The form of a precept may be seen in the Appendix.

Returning officer to indorse on the writ, the day he receives it, and make out the precept.

officer, upon the receipt of the same writ, shall upon the back thereof indorse the day he received the same, and shall forthwith, upon receipt of the writ, make out the precept or precepts to each borough, town corporate, port or place within his jurisdiction, where any member or members are to be elected to serve in such new parliament, or to supply any vacancy during the present or any future parliament, and within three days * after the receipt of the said writ of election, shall by himself, or proper agent, deliver, or cause to be delivered, such precept or precepts to the proper officer of every such borough, town corporate, port or place within his jurisdiction, to whom the execution of such precept doth belong or appertain, and to no other person whatsoever."

Which are to be delivered in three days after receipt of the writ.

Sheriff, &c. not to give or take any fee for making out receipt, &c. of any writ or precept.

2. "That neither the sheriff nor his under sheriff in any county or city, nor the mayor, bailiff, constable, port-reeve, or other officer or officers of any borough, town corporate, port or place, to whom the execution of any writ or precept for electing members to serve in parliament doth belong or appertain, shall give, pay, receive, or take any fee, reward, or gratuity whatsoever, for the making out receipt, delivery, return or execution of any such writ or precept."

* The officer of the cinque-ports is allowed 6 days by the 20. & 11. W. III. c. 7. s. 2.

ELECTIONS FOR COUNTIES.

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The writ of summons directs the sheriff to make the election at the next county court after the delivery of the writ, and if the county court fell on the day the writ was delivered he was bound to proceed to the election; but the writ does not point out the place where the election shall be held, so that the sheriff was left to hold the court at such part of the county as he might think fit, wherefore the 7 & 8. *Will. III. c. 25. f. 3.* enacts, "That upon every election to be made of any knight or knights of the shire to serve in this present or any future parliament, the sheriff of the county where such election shall be made, shall hold his county court for the same election at the most public and usual place of election within the said county, and where the same has most usually been held for forty years last past, and shall there proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ, or upon the same day, and then shall adjourn, the same court to to some convenient day, giving ten days notice of the time and place of election." *

But sheriffs having, where the county court thappened to fall out within the six days after the receipt of the writ, or upon the same day, made

Proclaiming and holding the election.

7. H. IV. c. 13.

1. *Whinl.* 355.

7. & 8. *W. III.* c. 25.

County court to be held at the usual place; and proceed to election, unless it shall fall out in six days after receipt of the writ.

* The county court for Yorkshire was previous to this act, held on a *Monday*; but as it occasioned the suitors, at elections, and other times, to hold upon *Sundays*; the 9th section of this act directs the same in future to be held on a *Wednesday*.

ELECTIONS FOR COUNTIES.

28. *G. II. c. 18.*
No Sheriff to
adjourn the coun-
ty court for long-
er than sixteen
days.

long adjournments for the purpose of delaying the election, the 18. *Geo. II. c. 18. f. 10.* enacts, "That no sheriff shall in such case take upon himself to adjourn such court for longer than sixteen days, any law, usage, or custom to the contrary notwithstanding."

25 *G. III. c. 84.*

The above regulations for proceeding to election, being found inconvenient, the 25. *Geo. III. c. 84. f. 4.* enacts, "That immediately after receipt of the writ for making any such election, and indorsing on the back thereof the day of receiving the same as by law required, it shall and may be lawful for the sheriff of such county or shire, and he is hereby required, within two days after the receipt thereof, to cause proclamation to be made at the place where the ensuing election ought by law to be holden, of a special county court to be there holden for the purpose of such election only, on any day, Sunday excepted, not later from the day of making such proclamation than the sixteenth day, nor sooner than the tenth day; and that he shall proceed in such election, at such special county court, in the same manner as if the said election was to be held at a county court, or at an adjourned county court, according to the laws now in being: Provided always, that the usual county court for all other purposes, or any adjournment made thereof, shall take place, be held and proceeded in, by the sheriff, or his deputy, and may
from

Within two days
after receipt of
the writ, pro-
clamation to be
made of the e-
lection, which
must begin be-
tween the 10th
and 16th days af-
ter proclamation.

ELECTIONS FOR COUNTIES.

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from time to time be further adjourned and proceeded in, in such and the same manner, and at the same times and places, as if the writ for the election of a knight or knights of the shire had not been received."

18. *Geo. II. c. 18. s. 7.* * At every such [county] election within that part of Great Britain called England and dominion of Wales, the sheriff, or in his absence, the under sheriff, or such as he shall depute, shall appoint, make or erect, or cause to be appointed, made, or erected, at the expence of the candidates, such number of convenient booths or places for taking the poll, as the candidates, or any of them, shall three days at least before the commencement of the poll desire, so as the same do not exceed the number of rapes, lathes, wapentakes, wards, or hundreds within the said county, and not exceeding in the whole the number of fifteen; and shall affix, or cause to be affixed on the most public part of each of the said booths or polling places the name or names of the rape, wapentake, lathe, ward, or hundred, or rapes, wapentakes, lathes, wards, or hundreds, for which such booth or polling place is allotted or designed; and the said sheriff, under sheriff, or such person as he shall depute, shall appoint a proper clerk or clerks at

Erecting booths.

18 G. II. c. 18.

Booths to be erected at the expence of the candidates.

Proportioned to the hundreds, &c. and not exceeding 15.

The Sheriff to appoint a clerk at each booth for polling at the candidates expence.

* Prior to these regulations, the 10. *Ann. c. 23.* had directed the Sheriffs of Yorkshire and Cheshire, to appoint seven convenient tables or places for taking the poll.

ELECTIONS FOR COUNTIES.

List of towns,
&c. for each
booth, of which
copies to be given
at 2s. each.

each of the said booths or polling places to take the poll (which said clerk or clerks shall be at the expence of the candidates, and be paid not exceeding one guinea *per* day each clerk), and the said sheriff or under sheriff shall also make out a list for each of the said booths or polling places respectively, of all the several towns, villages, parishes, and hamlets, lying or being wholly or in part in the rape, wapentake, lathe, ward, or hundred, or in the several rapes, wapentakes, lathes, wards, or hundreds, for which such booth or polling place is allotted or designed; and shall, upon request made, deliver a true copy thereof to any of the candidates, or their agents, who shall desire the same, taking for each of the said copies the sum of two shillings and no more."

Providing places
for administering
the oaths of al-
legiance, &c.

34. G. III. c.
73.

34. *Geo. 3. c. 73. s. 6.* "That in case the candidates or any of them, *shall three days at least before any such election*, give, or cause to be given, notice in writing to the returning officer or officers to provide proper places for administering the said oaths, declarations, and affirmations [i. e. the oaths of allegiance, supremacy, and abjuration, and the declaration of fidelity, and the declaration or affirmation of the effect of the said oath of abjuration] as aforesaid to the electors, then and in every such case such proper places shall be prepared and provided, so as to be ready *before* and against the day of election; and in case there shall not be a sufficient number
of

of fit and convenient places for that purpose, at the town or place where such election shall be had, which the returning officer or officers can conveniently and at a reasonable expence procure, then the said returning officer or officers shall, and is and are hereby required to cause such booths or temporary erections to be made, in convenient places in that behalf as shall be necessary for the purpose," the expence of which booths or places are to be repaid by the candidates, in equal proportions.

II. Of the proceedings at the election.

On the day appointed by the sheriff for the election, he is directed by the 23. *Hen. VI. c. 14.* to proceed "in his full county, betwixt the hour of 8 and the hour of 11 before noon, without collusion in this behalf," under a penalty of 100*l.* to the king, and another 100*l.* to him that will sue, provided the suit be commenced within 3 months after the parliament begins.

Hour of election.

23. H. VI. c. 14

Election to be begun between 8. and 11 in the forenoon.

The proceedings are begun, by making proclamation for silence, and then reading the writ of summons; *immediately after which* the sheriff is to read or cause to be read the whole of the 2. *Geo. II. c. 24.* † intituled, "*An act for the more effectual preventing bribery and corruption in the election of members to serve in parliament.*"

Proceedings.

† Vide this act in the appendix.

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The sheriff is also required by the 3d section of this act *immediately after reading the writ* to take the following oath, viz.

Sheriff's oath.

" I A. B. do solemnly swear, that I have not directly or indirectly, received any sum or sums of money, office, place or employment, gratuity, or reward, or any bond, bill or note, or any promise or gratuity whatsoever, either by myself or any other person to my use, or benefit, or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons as shall, to the best of my judgment, appear to me to have the majority of legal votes."

By whom to be administered.

" Which oath any justice or justices of the peace of the said county, city, corporation, or borough, where such election shall be made, or, in his or their absence, any three of the electors are hereby required and authorized to administer; and such oath, so taken, shall be entered, among the records of the sessions of such county, city, corporation and borough as aforesaid."

These preliminaries being complied with, the electors proceed to the choice of their representatives; which is determined either by the *view*, the *poll*, or the *scrutiny*.

If

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If the election is determined by the *view*, it is done by voices, or holding up of hands; the collecting of the friends of each candidate into separate troops or bodies, or such other way as has been usual upon such occasions. But the most common way is, by voices of the electors calling out the names of their favourite candidates.

By the view.

Key on Co. 11.

234.

1 Whitel. 393.

But if the election is not determined by the *view*, and a *poll* is demanded, the sheriff has no discretion, but must grant it; for by the 7. & 8. W. III. c. 25. s. 3. "In case the said election [of knights of the shire] be not determined upon the view with the consent of the freeholders there present, but that a poll shall be *required* for determination thereof, then the said sheriff, or in his absence his under sheriff, with such others as shall be deputed by him, *shall* forthwith there proceed to take the said poll in some open or public place or places by the same sheriff or his under sheriff as aforesaid in his absence, or others appointed for taking thereof as aforesaid."

By the poll.

7. & 8. W. III.
c. 25.

Sheriff, &c. to
take the pol. if
required.

And in the Cambridgeshire case, where the under-sheriff having read the writ of summons at the due time and place in the town of Cambridge, and the freeholders having divers scholars and others amongst them declared themselves, some for one set of candidates, by calling upon their names, and going together in one troop; and others

Glanv. 80.

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others for the other candidates, doing the like. It was doubtful which troop had the greater number of freeholders, whereupon a poll was demanded on behalf of one set of candidates, and the under-sheriff in words promised to swear the freeholders, and so try out the right by the poll; but he departed about twelve of the clock, without declaring who were elected, and did not afterwards come back, but made a return. It was conceived by the committee, and so reported to the house, and there resolved, "That no election at all was had, or made, of any one knight of the shire for the said county; but that all was void, by reason that the view being uncertain, and divers mingled amongst the freeholders who ought not to have voices, nor could be distinguished from the freeholders by the view, the poll was justly, and in due time demanded; and the *denying* thereof, or not accomplishing thereof, in such case of doubt, where neither side yieldeth to the other, turneth all into a nullity." And therefore the house ordered a new writ.*

Commissioners to
be appointed to
administer the
oaths of allegi-
ance, &c.

34. G. III. c.
73.

34. *Geo. III. c. 73.* "Whereas great delays have arisen in the election of members to serve in parliament for places in England, Wales, and the town of Berwick upon Tweed, by the time

* There are other cases in Glanville's reports, where the house have declared elections void, for refusing a poll, when demanded, which will be afterwards noticed under "*Election for cities, &c.*"

and

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and place in which the oaths of allegiance, supremacy, the declaration of fidelity, the oath of abjuration, and the declaration or affirmation of the effect thereof, are usually administered to electors; and in many places it might thereby be rendered impracticable to receive the votes of all persons claiming, and having a right to vote within the time limited by law, for the duration of the polls at such election." It therefore enacts,

" That when a poll shall be demanded at any election of a member or members to serve in parliament for any county, city, borough or other place in England or Wales, or for the town of Berwick upon Tweed, the returning officer or officers at every such election, after such poll shall be demanded, shall, at the instance and request in writing of any of the candidates under his or their hand or hands, immediately after such request, and before he or they shall proceed further in taking the poll, retain, nominate, and appoint two or more persons to administer the oaths of allegiance, supremacy, the declaration of fidelity, the oath of abjuration, and the declaration or affirmation of the effect thereof†, now required by law to be taken, made, or subscribed by voters at elections of members to serve in parliament, and to

Returning officer on request of candidates to appoint persons to administer the oaths of allegiance, &c.

† Vide these oaths, &c. in the appendix.

certify

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certify the names of the respective electors, who shall take such oaths, or subscribe and make such declarations or affirmations respectively, in manner hereinafter-mentioned; and the persons to be appointed as aforesaid, or in manner hereinafter-mentioned, shall respectively have full power, and each of them is hereby authorized and required to administer all and every such respective oaths, declarations, and affirmations to every such elector who shall desire or be required to take the same oaths or any of them, or to subscribe or make the said declarations and affirmations respectively, previous to his voting at any such election; and every such person so appointed as aforesaid shall, immediately after such appointment, and before he shall take upon him to act under such appointment take the following oath: (that is to say)

Persons so appointed to take the following

Oath.

" I do swear, That I will faithfully and impartially administer the oaths of allegiance, supremacy, and abjuration, and the declaration of fidelity, and declaration or affirmation of the effect of the said oath of abjuration, to such persons as shall lawfully apply to me in that behalf, in order to qualify themselves to vote at this election; and that I will on being thereunto requested, fairly and truly give to every such person, or any of them, who shall

shall take such oaths, or subscribe such declaration of fidelity, and make such declaration or affirmation of the effect of the said oath of abjuration, or either of them before me; a certificate thereof, according to the direction of an act of parliament made in the thirty fourth year of the reign of his majesty king George the third, intituled 'an act for directing the appointment of commissioners, to administer certain oaths and declarations required by law to be taken and made by persons offering to vote at the election of members to serve in parliament; and that I will not give such certificate to any person before he shall have taken such oath or oaths, or made or subscribed such declaration or declarations, affirmation or affirmations, as shall be mentioned in such certificate, before me and in my presence.'"

"Which oath, to be taken by the respective persons so to be appointed, the returning officer or officers at every such election, and his or their deputy or deputies, or any of them, is and are hereby authorized and required to administer."

2. "That after the persons so appointed shall have taken such oath, so required to be taken by them

Electors to apply to such person before voting, who shall administer the oaths of allegiance, &c and give certificates thereof.

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them respectively as aforesaid, any person or persons claiming to vote at any such election as aforesaid, may at any time, before he or they shall give his or their vote or votes at such election, apply to any one of the persons so appointed and sworn as aforesaid, to take the said oaths of allegiance and supremacy, and abjuration, or any of them, or to subscribe the said declaration of fidelity, and make the said declaration or affirmation of the effect of the said oath of abjuration, or either of them, and the person to whom such application shall be made shall accordingly administer the same to such person or persons so claiming a right to vote, and shall immediately upon such oaths being taken, or declarations, or affirmations respectively being subscribed or made, sign and deliver a certificate thereof to such person who shall have taken such oaths, or made or subscribed such declarations or affirmations respectively, which certificate shall contain the name, addition, and place of abode of the person to whom the same shall be so given; and in case of persons taking the said oaths, shall be in the terms following: (that is to say),

Form of certificate of taking the oaths.

“ *A. B.* [naming the person taking the oath] *of* [naming the place of such person's abode, and his addition or occupation] *has taken the oath* [or
“ oaths,

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[oaths] of [naming the said oath or
oaths so administered] *before me this*
day of ”.

“ And in case of Quakers subscribing the said declaration of fidelity, or taking their affirmation of the effect of the said oath of abjuration, shall be in the form following: (that is to say),

“ *A. B.* [naming the person subscribing or affirming] of [naming the place of such person's abode, and his addition or occupation] *has made and subscribed the declaration of fidelity, and affirmed the effect of the oath of abjuration* [or if only one of those acts has been done, then naming such one act only] *before me, this day of* ”.

Or of making affirmations.

“ And every such person to whom such certificate shall be so given, and having a right to vote at such election, shall, on producing such certificate, to the returning officer or officers, or other person or persons, lawfully taking the poll at such election, be permitted to poll, and his vote shall be taken and received in like manner as if such respective oaths, declarations, or affirmations, mentioned and expressed in such respective certificates, had been administered by,
and

Production of certificate to entitle to vote.

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and made, subscribed, or taken before the returning officer or officers at such election."

Persons offering
to vote without
producing certificate,
to withdraw
and take the
oaths.

3. "That when any person or persons offering to vote at any such election, without producing such certificate as aforesaid, shall be lawfully required to take the said oaths of allegiance, supremacy, and abjuration, or any of them, or to subscribe the said declaration of fidelity, and make the said declaration or affirmation of the effect of the said oath of abjuration, or either of them; then such oaths, subscription, declarations, or affirmations, or any of them, shall not be administered by the returning officer or officers, or other person or persons taking the poll, but the elector or electors so required to take such oaths, or to subscribe or make such declarations or affirmations respectively, shall immediately withdraw, and shall take the said oaths, or subscribe and make the said declarations or affirmations respectively, before one of the persons appointed and sworn as aforesaid in manner herein before-mentioned."

If the number of
persons so appointed
should be insufficient,
more may be appointed.

4. "That if at any time during the poll at any such election, it shall be found that the number of persons so appointed as aforesaid, is insufficient for the purposes aforesaid, and that the poll is delayed for want of a sufficient number of persons to administer such oaths, declarations, and affirmations as aforesaid, then and in every such case, the returning officer or officers,

at

at such election may, and he or they is, and are hereby empowered and required, at the instance and request in writing of any candidate then present, to retain, nominate, and appoint such further number of persons, for the purpose of administering the said oaths, declarations, and affirmations as aforesaid, and of granting such certificates as aforesaid, as shall be necessary to prevent such delay; and the persons so nominated and appointed, shall take the like oath, which shall be administered to them respectively, in like manner, as is herein before directed with respect to the persons first appointed for the purposes aforesaid."

5. "That the returning officer or returning officers at every such election shall, and is, and are hereby required to appoint, find, and provide a proper place for every such person, so appointed as aforesaid, to execute the duty hereby imposed upon such persons, to which place the respective electors may have free access, without interrupting the poll, and so as to enable the persons so appointed to act separately without interfering with each other in the execution of their office; and that each of the said places so appointed, shall be open, and attended by the person or persons appointed to act there, during all such times, as the poll at any such election shall be kept open, and continue at least eight hours in every day, between the hours of eight

Returning officers to appoint proper places for taking the oaths, &c.

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in the morning, and eight in the evening, until the final close of the poll; and that the said oaths, and the said declarations, or affirmations of the effect of the said oath of abjuration, shall respectively be administered to as many of the electors being ready, and desiring to take or make the same respectively, as can conveniently take or make the same together, not exceeding the number of twelve at one time; and such returning officers shall also find, provide, and deliver to each person, who shall be appointed by him or them in manner aforesaid, a sufficient number of printed forms of the declaration of fidelity, required by law to be made and subscribed by quakers, before they can be admitted to vote at such election, with blanks therein for the names of the persons offering to make and subscribe the same to be inserted therein, one of which forms shall be filled up with the name of, and subscribed by, the persons desiring to make and subscribe the declaration of fidelity; and such returning officer, or returning officers shall also find, provide, and deliver to each person who shall be so appointed by him or them as aforesaid, a sufficient number of printed certificates, agreeable to the form hereinbefore directed, to be filled up as occasion shall require, and deliver to each elector so taking the said oaths, or subscribing or affirming as aforesaid."

6. In case the candidates, or any of them, *three days at least before any such election*, give notice in writing to the returning officer to provide proper places for administering the oaths, &c. Then such places are to be prepared before the day of election; and in case there are not a sufficient number of convenient places, at the town where such election is to be had, which can at a reasonable expence be procured, then the returning officer is to cause booths or temporary erections to be made*. "The expence of which booths or places, and of the said printed forms, and also the allowance and compensation to be made to the several persons who shall be appointed to administer the said oaths, declarations, and affirmations as aforesaid, for their trouble and attendance, not exceeding one pound one shilling a day to every of them for each day of attendance, shall be defrayed and repaid by the candidates at such election, in equal proportions to the returning officer or returning officers, who shall have incurred such expence, and shall and may be recovered by such returning officer or returning officers in any of his majesty's courts of record at Westminster, by action of debt, or on the case, bill, suit, or information, wherein no effoin, protection, or wager of law, or more than one imparlance shall be allowed."

The returning officer, on notice, to provide such places to be ready by the day of election.

Expences to be defrayed by the candidates.

† Vide this part of the clause supra p. 22.

When the poll is
to commence, &c.

25. G. 3. c. 84.

Poll to com-
mence the day
after it is de-
manded.

but not to con-
tinue more than
15 days.

To be kept open
for seven hours
in each day, be-
tween 8 in the
morning, and 8
at night.

25. *Geo. III. c. 84. f. 1.* " Every poll which shall be demanded at any election, for a member or members to serve in parliament for any county, city, borough, or other place, within England, Wales, or for the town of Berwick upon Tweed, shall commence on the day upon which the same shall be demanded, or upon the next day at farthest (unless it shall happen to be a Sunday, and then on the day after); and shall be duly and regularly proceeded in from day to day * (Sundays excepted) until the same be finished; but so as that no poll for the election of any members or members to serve in parliament, shall continue more than fifteen days at most, (Sundays excepted); and if such poll shall continue until the 15th day, then the same shall be finally closed at or before the hour of three in the afternoon of the same day."

3. And in order that electors may have full time and opportunity to poll, " all and every returning officer and officers, unless prevented by any unavoidable accident, shall during the

* It was argued in the Bristol case, against the eligibility of Mr. Burke, who was nominated on the second day of the poll, that the election is in the eye of the law, completed on the first day; that the sound of voices, or the shew of hands, on the view, is in truth the election; and the poll, if it be demanded, only a method of ascertaining who has the majority of voices. But in favour of Mr. Burke it was said, that in the statutes, "election," and "poll" are used as synonymous expressions; and the cases of Beeralston in 1640. (2. *Journ.* 14.) and Montgomery in 1705-6 (15. *Journ.* 94. 5.) were cited as in point. The committee held Mr. Burke to be eligible. 1. *Doug.* 245.

continuance

continuance of the poll, on every day subsequent to the commencement of the same, cause the said poll to be kept open for seven hours at the least in each day, between the hours of eight in the morning and eight at night."

16. "Notwithstanding any thing in this act contained, it shall and may be lawful, for the sheriff of the county of Southampton, and he is hereby required, after any poll for the said county shall have closed at Winchester, and which shall always be closed within the space of 15 days at the most, in the manner above required, to adjourn the poll to Newport in the Isle of Wight, in case the same shall be required by one or more of the candidates, so that every such adjourned poll shall commence within 4 days from the close of the poll at Winchester, and shall not continue longer than 3 days at the most."

After the poll closes at Winchester, which must be within the 15 days, to adjourn to Newport in the Isle of Wight, if required, and there commence in 4 days, and not continue longer than 3 days.

7. & 8. W. III. c. 25. s. 5. "The said sheriff or in his absence his under sheriff, or such as he shall depute as aforesaid, shall at the same place of election proceed to the polling all the freeholders then and there present, and shall not adjourn the county court then and there held, to any other town or place within the same county, without the consent of the candidates, nor shall, by any unnecessary adjournment in the same place of election, protract or delay the election; but shall duly and orderly proceed in

7 & 8. W. III. c. 25.

Sheriff not to adjourn the court, unless the candidates consent.

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the taking of the said poll, from day to day and time to time, without any further or other adjournment, without the consent of the candidates, until all the freeholders then and there present shall be polled, and no longer."

But the poll may be adjourned from Winchester to Newport in the Isle of Wight.

10. "The sheriff of the county of Southampton, or his deputy at the request of one or more of the candidates for election of a knight or knights for that county, shall adjourn the poll from Winchester, after every freeholder then and there present is polled, to Newport in the Isle of Wight, for the case of the inhabitants of the said Island; any thing in this act contained to the contrary notwithstanding."

Poll-clerks.
7 & 8. W. III.
c. 25.

7. & 8. W. III. c. 25. f. 3. "For the more due and orderly proceeding in the said poll, the said sheriff, or in his absence his under-sheriff, or such as he shall depute shall appoint such number of clerks as to him shall seem meet and convenient for taking thereof; which clerks shall all take the said poll, in the presence of the said sheriff, or his under-sheriff, or such as he shall depute; and before they begin to take the said poll every clerk so appointed shall by the said sheriff, or his under-sheriff as aforesaid, be sworn* truly and indifferently to take the same poll,

To be sworn.

* The form of the oath will be this: "I do swear, that I will at this present election of members (or a member) to serve in parliament for the county of L. truly and indifferently take the poll, and set down the name of each freeholder, and the place of his freehold,

poll, and to set down the names of each freeholder, and the place of his freehold, and for whom he shall poll*, and to poll no freeholder who is not sworn, if so required by the candidates or any of them, (which oath of the said clerks, the said sheriff or his under-sheriff, or such as he shall depute, are hereby impowered to administer); and the sheriff or in his absence his under-sheriff, as aforesaid, shall appoint for each candidate such one person as shall be nominated to him by each candidate, to be inspectors of every clerk who shall be appointed for taking the poll."

And set down the name of each freeholder, and for whom he polls.

Sheriff, &c. to appoint inspectors.

18. *Geo. II. c. 18. s. 9.* "The sheriff, or in his absence the under-sheriff, or such as he shall depute, shall at every such election, allow a cheque-book for every poll-book for each candidate, to be kept by their respective inspectors at every place where the poll for such election shall be taken or carried on."

18. G. II. c. 18. To allow a cheque-book for every poll-book for each candidate.

10. *Ann. c. 23. s. 5.* "And the better to detect and punish any offenders against this act:" (viz.

10. A. c. 23.

"an act for the more effectual preventing fraudulent

and for whom he shall poll, and poll no freeholder, who is not sworn or put to his affirmation, if so legally required." * * There is no oath appointed to be taken by the cheque-clerk.

* "Any person having a right to vote for two members to serve in parliament, who hath given a single vote, hath not a right to come afterwards, and give a second vote, during the said election." 15. *Journ. 1735.* And by the 18. *Geo. II. c. 18. s. 5,* any freeholder voting more than once at any election, forfeits £40.

Not only the place of the elector's freehold, but also his abode, &c. to be entered.

conveyances, in order to multiply votes for electing knights of shires to serve in parliament) it is enacted, "That in taking the poll, the sheriff or his under sheriff, and clerks, shall enter not only the place of the elector's freehold *, but also the place of his abode; as he shall declare the same at the time of the giving his vote, and shall also make or enter *jurat* against the name of every such voter who shall be tendered and take the [freeholder's] oath hereby required." And by the 8th section (if the voter is a Quaker), "shall also make or enter *affirmat*, against the name of every such Quaker."

18. G. II. c. 18.
Voting at each booth to be regulated by the list.

18. Geo. II. c. 18. s. 8. "No sheriff, under sheriff, or clerk, appointed to take the poll at any of the said booths or polling places, shall admit any person to vote for any lands, tenements, or other freehold estate, *sworn* by the said oath [viz. the freeholder's oath] to be lying and being at some parish, town, or place, or parishes, towns, or places, which parish, town, or place, or parishes, towns, or places, or any of them, or any part of them, is not or are not mentioned in the list so made out for such booths or polling places as aforesaid, unless such lands, tenements, or estate lie or be in some town, li-

* When a voter *misnames* the place where his freehold is situate, his vote is lost, as will afterwards appear from several cases mentioned under "Electors for counties."

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berly, or place not mentioned in any of the lists so made out for all the said booths or polling places as aforesaid.”*

By the 7. & 8. *W. III.* An oath was directed to be taken by every freeholder previous to his voting (if required); but it was afterwards altered and another appointed by the 10. *Ann. c. 88. s. 3*; and again by the 18. *Geo. II. c. 18.* the first section whereof enacts, “That upon every election to be made within the part of Great Britain called England, or dominion of Wales, of any knight or knights of the shire to serve in parliament, every freeholder (instead of the oath or affirmation prescribed to be taken by the 10. *Ann. c. 88.*) before he is admitted to poll at the said election, shall (if required by the candidates or any of, or any other person having a right to vote at the said election) first take the oath (or being one of the people called Quakers, the solemn affirmation) following, *videlicet*,”

Freeholders to take the oaths, if required.

18. G. II. c. 18.

“*You shall swear* (or being one of the people called Quakers, you shall solemnly affirm) *that you are a freeholder in the county of* *and have a freehold estate consisting of* (specifying the nature of such freehold estate, whether

Freeholder's oath.

* A voter by not observing this regulation, may also lose his vote. Vide infra “*Elector for counties.*”

messuage,

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messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are*; and if in rent, then specifying the names of the owners or possessors of the lands or tenements, out of which such rent is issuing, or of some or one of them) *lying or being at* in the county of of the clear yearly value of forty shillings over and above all rents and charges payable out of, or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof, for your own use, above twelve kalendar months†, or that the same came to you within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made to you fraudulently on purpose to qualify you to give your vote; and that the place of your abode is at in and that you are

* Where a voter is incorrect in describing the estate, or naming the tenant or tenants, his vote will be lost, Vide infra "Electors for counties."

† There is an inaccuracy here, in not stating whether the twelve months are to be computed backwards from the day, when the voter polls; or from the day when the election commenced, but the most obvious construction is, that the computation is to be, from the day when the voter takes the oath, and gives his vote. 3. Doug. 234.

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twenty one years of age, as you believe, and that you have not been polled before at this election."

"Which oath (or solemn affirmation) the sheriff by himself, his under-sheriff, or such sworn clerk or clerks, as shall be by him appointed for the taking of the poll, is hereby required to administer." And persons committing, or suborning others to commit wilful perjury, incur the pains and penalties inflicted by the 5 *Eliz.* c. 9. and the 2 *Geo. II. c. 25.*

2 *Geo. II. c. 24. s. 1.* "Upon every election of any member or members to serve for the commons in parliament, every freeholder, citizen, freeman, burgess, or person having or claiming to have a right to vote or be polled at such election, shall before he is admitted to poll at the same election, take the following oath (or being one of the people called *Quakers*, shall make the solemn affirmation appointed for *Quakers*,) in case the same shall be demanded by either of the candidates, or any two of the electors; that is to say,

"I *A. B.* do swear, (or being one of the people called *Quakers*, I, *A. B.* do solemnly affirm,) *I have not received, or had, by myself or any person whatsoever in trust for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place, or employment,*

Bribery oath.

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ment, gift, or reward, or any promise or security for any money, office, employment, or gift, in order to give my vote at this election, and that I have not been before polled at this election."

"Which oath or affirmation the officer or officers presiding or taking the poll at such election, is and are hereby empowered and required to administer *gratis*, if demanded as aforesaid, upon pain to forfeit the sum of fifty pounds."

"And no person shall be admitted to poll, till he has taken and repeated the said oath in a public manner, in case the same shall be demanded as aforesaid, before the returning officer, or such others as shall be legally deputed by him."

Gloster. 30.

It was resolved *nam. con.* in the Gloucestershire case, that a person who refused to take the bribery oath when he first came to poll, and upon tendering himself afterwards to take the oath, had been rejected; "might be permitted to take the oath and vote at any time, during the poll."

7 & 8. W. III. c. 27.
Oaths of allegiance and supremacy, &c.

7. & 8. W. III. c. 27. s. 19. No person who shall refuse to take the oaths directed to be taken by the 1 W. & M. st. 1. c. 8. [i. e. the oaths of allegiance and supremacy] or being *Quakers**, shall refuse to subscribe the declaration of fidelity, directed by the 1 W. & M. st. 1. c. 18. "(which

* And now, *Moravians*, are by the 22 Geo. II. c. 30, permitted to affirm, in all civil cases, in the same manner as *Quakers*.

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oaths and subscription respectively, the sheriff or chief officer, taking the poll at any election of members to serve in parliament. at the request of any one of the candidates, are hereby empowered and required to administer *) shall be admitted to give any vote for the election of any knight of the shire, citizen, burghers or baron of the Cinque-Ports to serve in parliament."

And by the 6 *Ann. c. 23. f. 13.* "Every person who shall refuse to take the oath [of abjuration †] last herein-before recited, or being a quaker, shall refuse to declare the effect thereof upon his solemn affirmation as directed by the 7 and 8 *Will. III. c. 34.* (which oath or declaration, the sheriff, president of the meeting, or chief officer president of the meeting, or chief officer taking the poll at any election of members to serve in the house of commons, for any place in Great-Britain, or commissioners for choosing burghesses for any place in Scotland, at the request of any candidate, or other person present at such election, are hereby empowered and required to administer) shall not be capable of giving any vote for the election of any such

6 *Ann. c. 23.*
f. 13.
Oath of abjuration, &c.

* The returning officer, if required, is to appoint commissioners for this purpose, and also for administering the oath of abjuration. *Vide supra p. 26.*

† The oath alluded to in this clause, was altered by the 1 *Geo. I. c. 13. f. 1.* and again on the death of the pretender by the 6 *Geo. III. c. 5. f. 1.* and may be found as directed to be taken by the last mentioned statute, in the appendix.

member

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member to serve in the house of commons for any place in Great-Britain, or commissioner to chuse a burges for any place in Scotland."

Scrutiny.

Philipps 136.

From the 25 *Geo. III. c. 84, f. 1.* which will presently be noticed, it seems, that the granting or refusing a scrutiny is discretionary in the sheriff. Yet in the case of Sudbury in 1780, the committee appear, not to have so considered it. The mayor, who is the returning officer, "found obstructions in proceeding with the poll, and some of the voters being riotous, persons might thereby have been admitted to vote who had no right, and a scrutiny having been demanded, he had for those reasons, consented to it." The petitioner contended, that the scrutiny was illegal; but the committee resolved, "upon the state of the evidence given, that the mayor had a right to grant a scrutiny, *and that he ought not to have refused it.*"

25 G. III. c. 84.

The 25 *Geo. III. c. 84, f. 1.* above alluded to, directs, "that the returning officer or officers at every such election [viz. for any county, city, borough or other place] shall, immediately, or on the day next after the final close of the poll, truly, fairly, and publicly declare * the name or names of the person or persons who have the majority of votes on such poll, and shall forth-

Returns to be made at the close of the poll, or the day after, unless a scrutiny is demanded.

* From the case of Arundel, in *Glanville*, (p. 71.) a returning officer, after the numbers are once declared, cannot revive the poll. Vide infra "*Electors for cities, &c.*"

with

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with make a return of such person or persons; *unless* the returning officer or officers, upon a scrutiny being demanded by any candidate, or any two or more electors, shall *deem it necessary* to grant the same; in which case, it shall and may be lawful for him so to do, and to proceed thereupon."

And by the second section, "whenever a scrutiny shall be granted as aforesaid, and there shall be more parties than one objecting to votes on such scrutiny, the returning officer or returning officers, shall decide alternately, or by turns, on the votes given, for the different candidates who shall be parties to such scrutiny, or against whom the same shall be carried on."

In which case the objections to be decided alternately.

6. "That upon every election of any member or members to serve in parliament for any county, city, borough, or place within England or Wales or for Berwick-upon-Tweed, it shall and may be lawful for the returning officer or officers, if he or they see cause, and he and they are in such case authorized, during the continuance of any scrutiny which shall have been granted as aforesaid, to administer an oath to any person whatsoever, consenting to take the same, touching the right of any person having voted at such election, or touching any other matter or thing material or necessary towards carrying on such scrutiny."

Returning officer authorised to administer oaths during a scrutiny.

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7 & 8. W. III.

c. 25.

Copy of the poll
to be delivered,
if desired, paying
for writing.

Penalty.

10 A. c. 23.

Poll books to be
delivered upon
oath to the clerk
of the peace, and
kept among the
records of the
sessions.

7. & 8. Will. 3. c. 25, f. 6. "Every sheriff, under-sheriff, mayor, bailiff, and other officer to whom the execution of any writ or precept shall belong for the electing members to serve in parliament, shall forthwith deliver to such person or persons as shall desire the same, a copy of the poll taken at such election, paying only a reasonable charge for writing the same." And every officer to whom the execution of any writ or precept belongs, for every wilful offence contrary to that act, forfeits to every party aggrieved 500*l.* to be recovered in the manner mentioned in the act.

10. Ann. c. 23. f. 5. "The said sheriff or returning officer, shall, within the space of twenty days next after such election, faithfully deliver over upon oath, (which oath the two next justices of the peace, one of whom to be of the quorum, are hereby enabled and required to administer), unto the clerk of the peace of the same county, all the poll books of such respective election, without any embezzlement or alteration, and in such counties where there are more than one clerk of the peace, then the original poll-books to one of such of the clerks of the peace, and attested copies thereof to the rest, to be carefully kept and preserved among the records of the Sessions of the peace of and for the said county."

III. *Of the return.*

When it is ascertained by any of the means before-mentioned, who have the majority of votes, the sheriff is "truly, fairly, and publicly," to declare the same; and then proceed to making a return according to the following statutory regulations:

7. *Hen. IV. c. 15.* "And after that they [the knights for the parliament] be chosen, the names of the persons so chosen (be they present or absent) shall be written in an indenture*, under the seals of all them that did choose them, and tacked to the same writ of parliament, which indenture so sealed and tacked shall be holden for the sheriff's return of the said writ, touching the knights of the shires. And in the writs of the parliament to be made hereafter, this clause shall be put: "*Et electionem tuam in pleno comitatu tuo factam, distinte & aperte sub sigillo tuo & sigilis eorum qui electioni illi interfuerint, nobis in cancellaria nostra ad diem & locum in brevi contentos certifies indilate.*"

How made.
7. H. IV. c. 15.

Names of the persons chosen to be written in an indenture and tacked to the writ.

8. *Hen. VI. c. 7.* "Such as have the greatest number of them that may expend 40s. by year and above as afore is said, shall be returned by the sheriffs of every county, knights for the parliament, by indentures sealed between the said sheriffs and the said choosers so to be made."

8 H. VI. c. 7.
Returns to be by indentures sealed between the sheriffs and the electors.

* Vide a form in the appendix.

ELECTIONS FOR COUNTIES.

When made.
10 & 11. H. III.
c. 7.

10. & 11. *Will.* 3. c. 7. " For preventing abuses in the returns of writs of summons, for the calling and assembling of any parliament for the future, or writs for the choice of any new member to serve in parliament, and to the end that such writs may by the proper officer or his deputy, be duly returned and delivered to the clerk of the crown, to be by him filed according to the ancient and legal course;" it is enacted, " That the sheriff, or other officer having the execution and return of any such writ which shall be issued for the future, shall, on or before the day that any future parliament shall be called to meet, and with all convenient expedition not exceeding *fourteen days* [amended by the 25. *Geo. III.* c. 84. next following] after any election made by virtue of any new writ, either in person or by his deputy, make return of the same to the clerk of the crown in the high court of chancery to be by him filed; and the sheriff, or other person making such return, shall pay to the said clerk of the crown the ancient and lawful fees of four shillings, and no more, for every knight of a shire, and two shillings, and no more, for every citizen, burghers, or baron of the cinque ports, returned into the said court to be by him filed; and the said sheriff or officer shall, by virtue of this act, charge the same to his majesty, his heirs or successors, and have allowance thereof in his account in the exchequer or elsewhere."

Sheriff on return of writ to pay the ancient fees, &c. and charge the same to the king.

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25. *Geo. 3. c. 84. s. 1.* " The returning officer or officers at every such election [for any county, city, borough or other place] shall immediately, or on the day next after the final close of the poll, *truly, fairly, and publicly* declare the name or names of the person or persons who have the majority of votes on such poll, and shall forthwith make a return of such person or persons, unless the returning officer or officers, upon a scrutiny being demanded by any candidate, or any two or more electors, shall deem it necessary to grant the same." Which he is authorized to do, " but so as that in all cases of a general election, every returning officer or officers having the return of a writ, shall cause a return of a member or members to be filed in the crown office on or before the day on which such writ is returnable; and every other returning officer or officers, acting under a precept or mandate, shall make a return of a member or members, in obedience to such precept or mandate, at least six days before the day of the return of the writ, by virtue of which such election has been made; and so that in case of any election, upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted as aforesaid, then that a return of a member or members shall be made within thirty days after the close of the poll (or sooner, if the same can conveniently be done)."

25. G. III. c. 84.

Return to be made at the close of the poll, or the day after, unless a scrutiny is demanded.

If a scrutiny is granted, then on general elections, the officer having the return of the writ, to cause returns to be filed before the writ is returnable, other returning officers to make their return, six days before.

Penalties, &c.
for making un-
due returns.

The negligence of sheriffs and other returning officers, in making returns to the writs or precepts, has occasioned a variety of statutes on the subject, and they have imposed different penalties, on breach of the regulations contained in them.

5. R. II. st. 2.
c. 4.

Sheriff to be a-
merced for omit-
ting his returns.

5. *Rich. II. st. 2. c. 4.* "If any sheriff of the realm be from henceforth negligent in making his returns of writs of the parliament; or that he leave out of the said returns, any cities or boroughs, which he be bound, and of old time were wont, to come to the parliament, he shall be amerced, or otherwise punished, in the manner as was accustomed to be done in the said cases in times past."

11. H. IV. c. 1.

The 11. *Hen. IV. c. 1.* recites the 7. *Hen. IV. c. 15.* "And forasmuch as in the same statute no penalty was ordained or limited in special upon the sheriffs of the counties, if they make any returns to the contrary of the same statute." It ordains, "That the justices assigned to take the assizes, shall have power to enquire in their sessions of assizes, of such returns made. And if it be found by inquest, and due examination before the same justices, that any such sheriff hath made, or hereafter shall make any return contrary to the tenor of the said statute, that then the said sheriff shall incur the penalty of 100l. to be paid to our lord the king. And moreover that the knights of the counties so unduly re-
turned

If found on in-
quest, that sheriff
hath made return
contrary to the
7. H. IV. to
forfeit 100l.

turned, shall lose their wages * of the parliaments of old time accustomed."

The 6. *Hen. 6. c. 4.* recites the two last statutes; "to the great mischiefs of sheriffs and knights of the shire, which be forebarred and put out of their answer against such inquests or offices, taken before the said judges, because of the statute and ordinance aforesaid." And therefore ordains, "That all the knights of the shires, chosen for this present parliament, and sheriffs of the same counties against whom any inquests or offices of undue election be found before the justices of assizes shall have their answer and traverse to such inquests or offices taken; and also all the knights from henceforth to be chosen, and the sheriffs that shall make such elections shall have their answer and traverse to such inquests and offices before any justices of assizes hereafter to be taken; and the said knights and sheriffs shall not be endamaged unto our said lord the king or his successors, for any such inquest taken, or to be taken, until they be duly convicted according to the form of the law."

6. H. VI. c. 4.

The knights chosen for the parliament, and the sheriffs of counties may have their traverse of an office found against them.

8. *Hen. VI. c. 7.* "And if any sheriff return knights to come to the parliament contrary to the

8. H. VI. c. 7.

* Every knight of the shire was allowed by the day *four shillings*; and every citizen and burghers *two shillings*, during the continuance of the parliament, and for so many days longer, as they might reasonably return to their dwellings; and they were also allowed for the costs of writs, and other ordinary fees and charges.

Justices of assize to inquire of the returning of knights to parliament.

Penalty of the sheriff for undue returns.

Knights falsely returned to lose their wages.

23 H. VI. c. 14.

The Penalty on a sheriff making an undue return of a member of parliament.

said ordinance [viz. who have not the greatest number of them that may expend 40s. by the year] the justices of assizes, in their sessions of assizes, shall have power by the authority aforesaid thereof to inquire; and if by inquest the same be found before the justices, and the sheriff thereof be duly attainted, that then the said sheriff shall incur the pain of 100l. to be paid to our lord the king, and also that he have imprisonment by a year, without being let to bail or mainprize; and that the knights for the parliament, returned contrary to the said ordinance shall lose their wages."

It is enacted by the 23. *Hen. IV. c. 14.* that the sheriff shall issue his precept to the mayor and bailiff, or to the bailiffs or bailiff where there is no mayor, and they are lawfully to return the precept by indentures between them and the sheriff, "and thereupon every sheriff shall make a good and rightful return of every such writ, and of every return by the mayor and bailiffs, or bailiffs or bailiff where no mayor is, to him made. And every sheriff at every time that he doth contrary to this statute, or any other statutes for the election of knights, citizens and burgeses to come to the parliament, before this time made, shall incur the pain contained in the said statute made the said 8th year, and moreover shall forfeit and pay to every person hereafter chosen knight, citizen, or burges in his county, to come to any par-

parliament and not duly returned, or to any other person, which in default of such knight, citizen, or burghers will sue 100*l.* whereof every knight citizen, and burghers so grieved, severally, or any other person which in their default will sue, shall have his action of debt against the said sheriff, or his executors or administrators, to demand and have the said 100*l.* with his costs spent in that case."

10. & 11. *Will. 3. c. 7. f. 3.* "Every sheriff or other officer, or officers aforesaid, who shall not make the returns, according to the true intent and meaning of this act, shall forfeit for every offence the sum of five hundred pounds, one moiety whereof shall be to his majesty, and the other moiety to him or them that shall sue for the same." To be recovered in the manner therein mentioned.

10 & 11. W. III.
c. 7.
Sheriff, &c. not
making return
forfeits 50*l.*

25 *Geo. III. c. 84. f. 14.* "If any sheriff or returning officer shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned to serve in parliament for any county, city, borough, or place within Great Britain, every such person may, in case it shall have been determined by a select committee, appointed in the manner herein-before directed, that such person was entitled to have been returned, sue the sheriff, or other officer or officers, having so wilfully delayed, neglected, or refused, duly to make such return, and every or any of them, at his election, in any of his majesty's courts of re-

25. Geo. III.
c. 84.
Returning officers
may be sued
for neglecting to
return persons
duly elected.

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cord at Westminster, or of the court of session in Scotland; and shall recover double the damages he shall sustain by reason thereof, together with full costs of suit."

Actions to be commenced within one year after the offence, or six months after conclusion of proceedings in the house.

15. "Every indictment, information or action, for any offence against this act, shall be found, filed, or commenced within one year after commission of the fact on which such indictment, information, or action shall be grounded, or within six months after the conclusion of any proceedings in the house of commons relating to such election."

False and double returns.

7. & 8. W. III. c. 7.

False returns of members prohibited.

The 7. & 8. *Will. III. c. 7.* recites, "Whereas false and double returns of members to serve in parliament are an abuse of trust in a matter of the greatest consequence to the kingdom, and not only an injury to the persons duly chosen, by keeping them from their service in the house of commons, and putting them to great expence to make their elections appear, but also to the counties, cities, boroughs, and cinque ports, by which they are chosen, and the business of parliament disturbed and delayed thereby:" and therefore enacts, "that all false returns, wilfully made, of any knight of the shire, citizen, burgess, baron of the cinque ports, or other member to serve in parliament, are against law, and are hereby prohibited, and in case that any person or persons shall return any member to serve in parliament for any county, city, borough, cinque

cinque port, or place, contrary to the last determination in the house of commons*; of the right of election in such county, city, borough, cinque port, or place, that such return so made, shall, and is hereby adjudged to be, a false return."

What shall be a false return.

2. "The party grieved, to wit, every person that shall be duly elected to serve in parliament for any county, city, borough, cinque port, or place, by such false return, may sue the officers and persons making or procuring the same, and every or any of them, at his election, in any of his majesty's courts of record at Westminster, and shall recover double the damages he shall sustain by reason thereof, together with his full costs of such suit."

Party grieved may sue in any court at Westminster, and recover double damages.

3. "And to the end the law may not be eluded by double returns," "If any officer shall wilfully, falsely, and maliciously return more persons than are required to be chosen by the writ or precept on which any choice is made, the like remedy may be had, against him or them, and the party or parties that willingly procure the same, and every or any of them, by the party grieved, at his election."

So, for any wilful double return the like remedy is given.

4. "That all contracts, promises, bonds, and securities whatsoever hereafter made or given, to

Contracts made to procure returns void.

* By the 2 Geo. II. c. 24. s. 4. such votes are to be deemed legal which have been so declared by the last determination in the house of commons, which last determination is final to all intents and purposes.

procure

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procure any return of any member to serve in parliament, or any thing relating thereunto, be adjudged void; and that whoever makes or gives such contract, security, promise, or bond, or any gift or reward, to procure such false or double returns, shall forfeit the sum of three hundred pounds, one third part thereof to be to his majesty, his heirs and successors, another third part thereof to the poor of the county, city, borough, or place concerned, and one third part thereof to the informer, with his costs, to be recovered in any of his majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law, shall be allowed, nor any more than one imparlance."

Penalty.
Clerk of the crown to enter every return and amendment.

5. "And for the more easy and better proof of any such false or double return," "The clerk of the crown for the time being shall from time to time enter, or cause to be entered, in a book for that purpose to be kept in his office, every single and double return of any member or members to serve in parliament which shall be returned or come into his office, or to his hands, and also every alteration and amendment as shall be made by him or his deputy in every such return; to which book all persons shall have free access at all seasonable times, to search and take true copies of so much thereof as shall be desired, paying a reasonable fee or reward for the same: and

All persons shall have access to the book, and the book or a copy may be given in evidence.

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and that the party or parties prosecuting such suit, shall and may at any trial give in evidence such book so kept, or a true copy thereof, relating to such false or double return, and shall have the like advantage of such proof, as he or they should or might have had by producing the record itself; any law, custom, or usage to the contrary notwithstanding; and in case the said clerk of the crown shall not, within six days after any return shall come into his office or to his hands, duly and fairly make an entry or entries as aforesaid, or shall make any alteration in any return, unless by order of the house of commons, or give any certificate of any person not returned, or shall wilfully neglect or omit to perform his duty in the premises, he shall for every such offence forfeit to the party and parties aggrieved the sum of five hundred pounds to be recovered as aforesaid, and shall also forfeit and lose his said office, and be for ever incapable of having or holding the same."

Clerk not entering returns in 6 days after receipt, making any alteration, or omitting to perform his duty, to forfeit 500l. and lose his office.

6. " Every information or action, grounded upon this statute, shall be brought within the space of two years, after the cause of action shall arise, and not after."

Information to be within two years.

Returns continued to be amended by the returning officers * till near the end of the last century, when the following resolution was passed

Amending returns.

13 Apr. 1690.
10 Journ. 377.

* The reasons for this practice are stated by Mr. Douglas in the first volume of his reports, p. 90. n. W.

by

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by the house, viz. "That after a return made into the crown office of members to serve in parliament, the same shall not be altered by the sheriff or the clerk of the crown, or any other, but by this house."

How amended.
1 Doug. 90.

When there is occasion to amend a return, the clerk of the crown is ordered to attend with it, and amends it in the house, by erasing the names of the persons, whom the house have determined not to have been duly elected, and inserting the names of those who ought to have been returned in their place. And if there be two returns, and one is determined to be void he takes that off the file, leaving the other; and, if that other contain the names of the person or persons determined not to have been duly elected, it is amended in the manner just described.

ELEC.

ELECTIONS FOR CITIES, TOWNS, BOROUGHs, AND CINQUE- PORTS*.

I. Of the duty of returning officers, on receipt of the writ or precept, and previous to the election.

II. Of the proceedings at the election.

III. Of the return.

I. Of the duty of returning officers, on receipt of the writ or precept, and previous to the election.

BY the 19 *Geo. II. c. 28. s. 7.* “The sheriff or sheriffs of every city or town being a county of itself, and having a right to elect a member or members of parliament by virtue of the writ issuing out of chancery, without any precept thereupon, within that part of Great Britain called England, shall forthwith, upon the receipt of the writ for election of a member or members to serve in parliament for such city or town [endorse the day he received it, according to the 7 & 8. *W. III. c. 25. s. 1.* and then] cause public notice to be given of the time and place of election, and shall proceed to election thereupon

Cities and Towns
Sec.

19 G. II. c. 28.
Sheriffs of cities
and towns to give
public notice.

* In London by the 11. *Geo. I. c. 18*; in Norwich by the 3. *Geo. II. c. 8*; and in Coventry by the 21. *Geo. III. c. 54.* particular regulations are enacted for proceeding in elections.

within

And proceed to election within 8 days, giving 3 days notice.

Boroughs &c.
7 & 8. W. III.
c. 25.

Returning officers of boroughs, &c. to indorse the day of the receipt of the precept, and give 4 days notice (within certain hours) of election, which must be within 8 days after receipt of the precept.

33 G. III. c. 64.

within the space of eight days next after that of his receipt of the said writ, and give three days notice thereof at least, exclusive of the day of the receipt of the writ, and of the day of election."

Sheriffs of counties, are directed by the 7 & 8. W. III. c. 25. s. 1. (supra p. 17.) after the receipt of the writ of summons forthwith to make out the precept to each *borough, town corporate, port or place* within their jurisdiction, and within three days, deliver the same to the proper officer to whom the execution belongs, and to no other person; "and every such officer upon the back of the same precept shall indorse the day of his receipt thereof, in the presence of the party from whom he received such precept, and shall forthwith cause public notice to be given [within certain hours, vide 33 Geo. III. c. 64. next following.] of the time and place of election, and shall proceed to election thereupon within the space of 8 days next after his receipt of the same precept, and give 4 days notice at least of the day appointed for the election."

The 33 Geo. III. c. 64, recites the last statute; and that "it is not in the said act specified at what time or within what hours of the day, it shall be incumbent on the proper officer to give such public notice as aforesaid; and whereas, by reason of such uncertainty, great inconveniences may arise from the undue practices of returning officers

officers and others," after which it enacts, "that from and after the passing of this act, all notices to be given of the time and place of any election for members to serve in parliament, shall be publickly given at the usual place or places, within the hours of eight of the clock of the forenoon, and four of the clock in the afternoon from the 25th day of October, to the 25th day of March, inclusive, and within the hours of eight of the clock in the forenoon, and six of the clock in the afternoon from the 25th day of March to the 25th day of October inclusive, and not otherwise; and that no notice to be given of the time and place of elections of members to serve in parliament, shall be deemed or taken to be a good or valid notice for any purposes, or to any effect whatsoever, which shall not be made and published in the manner and within the time of day aforesaid, any law, statute, usage, or custom to the contrary notwithstanding.

Notices of the time and place of elections to be given within certain hours.

"*And give four days notice at least of the day appointed for the election*"—The petitioners in the case of Seaford in 1785, alledged, that the returning officer proceeded to the election, without giving four days notice of the day appointed for such election, as required by the 7 & 8. W. III. c. 25. whereby the said election and return were null and void. It was admitted, that the election was made on the 30th March, in consequence

3. Lud. 3.

ELECTIONS FOR CITIES,

sequence of notice proclaimed on the 27th preceding, and the only question in the case was, whether it was void by the above statute. The counsel for the sitting members tendered evidence for the purpose of proving, that the petitioning elector attended at the election without objecting to the notice, and voted for the petitioning candidates: This was admitted by the other side. Then they offered to prove, that he and the petitioning candidate, and the friend who proposed him, were present when the election day was appointed, and that his friend proposed the day and urged it, although objected to on the part of the sitting members; and that the petitioning candidate consented. This was objected to; and the committee refused to let the evidence be produced; or even evidence to prove that every elector of Seaford was present and voted, except two, who were friends to the sitting members and declined voting. The counsel for the sitting member then proposed to prove, that the notice of election had been given fraudulently by the returning officer in collusion with the petitioners; this evidence the committee also refused to hear. Afterwards they determined, that the election was void.

Providing places
for administering
the oaths of al-
legiance. &c.

34. G. III. c.
73.

34 Geo. III. c. 73. s. 6. (supra p. 22) in case the candidates, or any of them, *three days at least before any election*, give notice in writing to the returning officer to provide proper places for administering

ministering the oaths of allegiance, supremacy, and abjuration, and the declaration of fidelity, and the declaration or affirmation of the effect of the oath of abjuration, then they are to be ready *before* the day of election. And if there are not a sufficient number of convenient places, at the place where the election is to be held, which can be procured at a reasonable expence, then booths or temporary erections are to be made, at the expence of the candidates.

II. Of the proceedings at the election.

On the day appointed for the election, after making proclamation for silence, the returning officer reads, or causes to be read, the writ (if it is for a city or town, where writs of summons issue without any warrant thereupon); or (if it is for any place where a precept only issues, then) the precept; and immediately after that, the whole of the act of the 2. *Geo. II. c. 24.* * for preventing bribery and corruption; and then by the third section of that act, he is required to take the oath therein mentioned, which any justice of the peace for the county, &c. or any three of the electors are authorized to administer, and the same is to be entered among the records of the sessions. In those cities, towns, ports, or

Proceedings.

* Vide this act in the appendix.

ELECTIONS FOR CITIES, TOWNS,

boroughs, where the right of election is in the whole or in part in freemen, the returning officer is also to read or cause to be read (immediately after reading the bribery act) the 3. Geo. III. c. 15.* intituled "*an act to prevent occasional freemen from voting at elections of members to serve in parliament for cities and boroughs.*"

Poll.

Must be granted
if demanded.

Glanv. 7.

If the election is not determined by the view, in the manner before-mentioned with regard to county elections, but a poll is demanded, the returning officer *must* proceed to take the same.

As in the case of Southwark. It appeared that at the election, Mr. Yarwood was clearly chosen in the *first* † place, to be one of the burgesses, and so pronounced. And for the *second* place it appeared, that Francis Mingaie esq; and Robert Bromfield, were propounded and put in election. The electors according to their ancient usage, declaring for whom they were, by holding up of hands; at the first trial it seemed Mr. Mingaie had the more hands with him; but upon a second, Mr. Bromfield had the more. But there were divers watermen and others present who had no voice in the election; and albeit a motion was made in due time, to try, by numbering the polls of the electors, who had the

* Vide this act in the appendix.

† It appears as well from this, as several other cases in Glanville's reports that in those days the method was, first to propose and choose one member, who was called the *first* burgess, and then the other; and so it was with respect to knights of the shire. And it was held a sort of distinction to be the *first* chosen. 1. Doug. 236. 7.

more

more voices, yet that course was not taken, but the assembly of the electors dissolved without numbering the polls. Two returns were made, one whereby Mr. Yarwood and Mr. Mingaie were nominated to be elected; and the other wherein Mr. Bromfield and Mr. Yarwood were nominated to be elected. Two questions were made, *first*, whether the return of Mr. Yarwood enabled him to sit in the house, without any amendment, he being a party returned in both indentures, and *secondly*, whether Mr. Mingaie or Mr. Bromfield were either of them duly elected. Touching the first, it was held that Mr. Yarwood's return was sufficient. As to the second it was resolved, that neither Mingaie or Bromfield were duly chosen; for there being a contrariety of opinions amongst the electors, and the poll duly demanded for clearing of the doubt, the truth was not tried out by the poll, which is the *only* certain means rightly to decide the difference in case of opposition, especially where others are present, besides the electors, who, in holding up their hands, or sounding of voices, or separation of companies, or the like, amongst a multitude, cannot be distinguished from the electors; and so the proceedings of the electors, in this case, concerning the second burgess's place, being very imperfect, and void in law, a warrant ought to be made;

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which was made accordingly, and a new writ issued.

Glanv. 76.

In the case of Newcastle under line, Mr. Leveson was clearly chosen for the first place; but touching the second place, Sir Edward Vere and Mr. Keeling were propounded, and divers voices given for the one, and divers for the other; and some doubt conceived who had the most voices. But upon a difference arising, what persons, inhabitants of the borough, ought to have voices in the election, and who not, *the poll being requisite to discern the truth who had the voices of most electors*, was moved for and called upon, but not pursued by occasion of the said difference; but the assembly dissolved, and Mr. Leveson and Sir Edward Vere returned. The return of the former was held good, but in the place of the latter (whose return was determined to be without warrant and illegal) a new writ was ordered.

Ibid. 104.

And in the Cirencester case, Mr. Poole, Sir William Master, and Sir Maurice Berkley were candidates. It appeared that Mr. Poole was clearly elected in the first place. In the next place it was conceived, that Sir William Master had the greatest number of voices of the inhabitants present; but a question was made whether the election should be, by all the inhabitants, or only by the freeholders; and it was agreed, that the election should be only made by the freehold-

ers.

ers. And it was demanded on the part of Sir Maurice Berkley, that the freeholders might be numbered by the poll, thereby to discern clearly, who had the most voices of freeholders only. When the poll was finished, the majority were for Mr. Poole in the first place, and for Sir William Master in the second place. On the petition of several inhabitants on behalf of themselves and Sir Maurice Berkley, the committee came to several resolutions, some of which it may be of use to notice.

First, " That there being no certain custom, nor prescription, who should be electors, and who not, we must have recourse to common-right, which, to this purpose, was held to be, that more than the freeholders only ought to have voices in the election ; namely, all men, inhabitants, householders, residents within the borough."

Thirdly, " That the agreement of competitors, or any others, cannot alter the law, or make an election, by freeholders only, lawful ; where the same ought to have been by all the inhabitants, householders, and residents."

Fourthly, " By the going away of some inhabitants, who had voice in the election, before they were polled, did not impeach the election. For that it appeared not that they went away through any fraud, or practice of Sir William Master, or any other on his behalf, but rather through

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their own ignorance, in mistaking the law, who should be electors; for the opinion delivered by counsel learned, the agreement of the competitors, and the declaration of the under-sheriff, could not any wise be supposed of malice or ill-meaning, and then *ignorantia juris non excusat*. Wherefore, if some electors did withdraw themselves, thinking they had no voice, whereas indeed they had, this was nothing to the purpose, but as if they had never come to the place, or departed of their own accord, before the election finished. In which case, the electors so departing, lose their voices; but the election subsequent, is not hereby prejudiced."

"That upon the whole matter, Sir William Master was well elected by the greater number of the due electors, namely, of the inhabitants householders, resiants; for when he was declared by the bailiff to have the greatest voice, and no man contradicted the same, nor demanded the polling, or numbering, of all the inhabitants so present, as admitting and allowing, that of such kind of persons he had the most voices, but demanded the poll only of freeholders, and of none others, it was a void demand of the poll; for the rest and all that followed thereupon, was mere surplusage and idle, the election being duly finished and accomplished before. But if the poll had been demanded of all the inhabitants, householders, resiants, then if the same had not been granted and taken accordingly, the election had

had been void, and a new writ must have gone forth to choose another in the place of Sir William Master; and, if any one had rested unsatisfied that Sir William Master had the most voices of rightful electors, he might have demanded the poll of them at any time, before the assembly was dissolved, which lasted all the while the freeholders were in polling, and afterwards till Sir William Master was the second time, and finally declared burghers in the second place." The case with the opinion of the committee being reported to the house, it was resolved that Sir William Master was duly elected.

After the poll is demanded, the returning officer is directed by the 34. *Geo. III. c. 73.* (supra p. 26.) previous to proceeding to take the poll, to appoint two or more persons as commissioners to administer the oaths of allegiance, supremacy, and abjuration, and the declaration of fidelity, and the declaration or affirmation of the effect of the oath of abjuration. *

Commissioners to administer the oaths of allegiance, &c.

34. G. III. c. 73.

It does not appear that there is any *express* provision in the statutes for polls to be taken in writing in cities, towns, and boroughs; yet the 6th section of the 7. and 8. *Will. III. c. 25.* (supra p. 48.) may be construed to *imply* it, by requiring "every sheriff, under sheriff, mayor, bailiff, and other officer," who takes an election, to de-

Poll to be taken in writing.

1. Lud. 319. a. E. E.

* Vide these oaths, &c. in the appendix.

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liver to any person desiring it, "a copy of the poll taken at such election." But, Mr. Luders observes, as this clause inflicts a penalty of 500*l.* for every offence contrary to the statute, it would in this respect be understood by the expression "*the poll*," to require copies to be given, only when a poll was in fact *taken in writing*. The statute of 19. *Geo. II. c. 28.* regulates only the elections for towns that are counties; but in this also the direction for taking a poll in *writing*, is only by implication from the sixth section, by which the returning officer is directed "to allow a cheque book for every poll book for each candidate." The just inference perhaps is, that from the want of an express provision, coupled with the long usage, that by law, the returning officers are officially bound to take a poll in writing.

When the poll is to commence.

25. G. III. c. 94.

Poll to commence the day after it is demanded, unless it be Sunday, but not to continue more than 15 days,

To be kept open for seven hours in each day.

By the 25. *Geo. III. c. 84. s. 1.* (*supra* p. 36.) The poll must commence on the day it is demanded, or the next day at farthest (unless it be Sunday), and be proceeded in from day to day (Sundays excepted), until finished; but so as not to continue more than fifteen days (Sundays excepted); if it continues till the fifteenth day, it is finally to close before three in the afternoon. On every day subsequent to the commencement, it is to be kept open for seven hours at the least in each day, between eight in the morning and eight at night. But, by the ninth section of this

this act, the regulations prescribed by it, as to the duration of polls and scrutinies, are not to extend to places where particular regulations have been specially enacted by statute.

The 25. *Geo. III. c. 84. s. 7.* recites, "Whereas it is expedient that all persons employed as poll-clerks at elections, should take an oath for the faithful discharge of their office, but the same is not at present required or authorized by law, except in counties, and other places for which there are express provisions made by statute," and therefore enacts, "That at every election of any member or members of parliament for any city, borough or other place, within England or Wales, or town of Berwick upon Tweed, every person whom the returning officer or officers shall retain to act as a clerk in taking the poll shall, before beginning to take such poll, be sworn* by such returning officer or officers truly and indifferently to take the said poll, and to set down the name of each voter, and his addition, profession, or trade, and the place of his abode, and for whom he shall poll; and to poll no person who is not sworn or put to

Poll clerks.

25. G. III. c. 84.

To take an oath for the faithful discharge of their duty.

* The form of the oath, will be this: "I do swear, that I will at this present election of a member (or members) to serve in parliament for the city (or borough, &c.) of _____ truly and indifferently take the poll, and set down the name of each voter, and his addition, profession, or trade, and the place of his abode, and for whom he shall poll, and poll no person who is not sworn or put to his affirmation, if so legally required."

his

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his affirmation, where, by this or any other statute, any oath or affirmation now is or hereafter shall be required, which oath of every such poll-clerk the said returning officer or officers is or are hereby authorized and required to administer."

Cheque-books.

19. G. II. c. 28.
Sheriffs of cities
and towns to al-
low a cheque-book
for every poll-
book.

19. *Geo. II. c. 28. s. 6.* "The sheriff or sheriffs of any *city* or *town*, being a county of itself in that part of Great Britain called England, or in his or their absence, his or their under-sheriff or under-sheriffs, or such other person as he or they shall depute, shall at every election of any member or members to serve in parliament for such city or town, allow a cheque-book for every poll-book for each candidate, to be kept by their respective inspectors, at the place where the poll for such election shall be taken or carried on."

Freeholders of
cities and towns
to be sworn, if
required.

19. G. II. c. 28.

By the 19 *Geo. II. c. 28. s. 1.* "Every person, demanding to vote for the election of any member to serve in parliament for such *city* or *town* being a county of itself, in that part of Great Britain called England, for and in respect of any freehold estate of *forty shillings* a year*, shall, before he is admitted to poll at the said election (if required by the candidates or any of them, or any person having a right to vote at

* By the 13. sect. This is not to extend to any person, where the right of voting is burgage tenure; or in respect of a freehold, not of the yearly value of 40s.

the said election), first take the oath (or being a Quaker, the solemn affirmation) following, viz.

“ You shall swear (or being a Quaker, you The oath.

shall solemnly affirm), *That you have a freehold estate, consisting of* (specifying the nature of such freehold estate, whether messuage, land, rent, tythe, or what else; and if such freehold estate consists in messuages, lands, or tythes, then specifying in whose occupation the same are; and if rent, then specifying the names of the owners, or possessors of the lands or tenements, out of which such rent is issuing, or some or one of them), *lying or being in the city and county, or town and county* (as the case may be) of

of the clear yearly value of forty shillings over and above all rents and charges payable out of, or in respect of the same; and that you have been in the actual possession or receipt of the rents and profits thereof for your own use, above twelve kalendar months; or that the same came to you within the time aforesaid by descent, marriage, marriage settlement, devise or promotion to a benefice in a church, or by promotion to an office; and that such freehold estate has not been granted or made to you fraudulently on purpose to qualify you

to

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to give your vote; and that the place of your abode is at in and that you are twenty-one years of age, as you believe, and that you have not been polled before at this election."

"Which oath (or solemn affirmation) the sheriff or sheriffs by him or themselves, or his or their under-sheriff or under-sheriffs, or such sworn clerk or clerks as shall be by him or them appointed for the taking of the poll is and are hereby required to administer;" and persons committing; or suborning others to commit wilful perjury, incur the pains and penalties inflicted by the 5 *Eliz. c. 9.* and the 2 *Geo. II. c. 25.*

Where no other oath is appointed (except the bribery oath, &c.) the electors to be sworn, if required.

25. G. III. c. 84.

"Although from the various and disputed rights of voting in several *cities, boroughs, and other places*, a positive oath of qualification cannot be required from the electors, yet it is apprehended that unqualified persons may be deterred from polling at such elections, under fictitious names or otherwise, by requiring from electors previously to their polling, the oath or affirmation after mentioned;" the 25 *Geo. III. c. 84. s. 5.* enacts, "That upon every election to be made, within that part of Great Britain called England or Wales, or town of Berwick upon Tweed, of any member or members to serve in parliament, in all cases where no oath

or

or affirmation of qualification, other than the oaths or affirmations against bribery, or of allegiance, supremacy, and abjuration, can now by law be required, every person claiming to give his vote at the said election, shall (if required by any candidate, or any person having a right to vote at such election), before he is admitted to poll, take the oath (or, being one of the people called Quakers, make the solemn affirmation) following; (that is to say),

" I do swear, (or being a Quaker, do affirm,) *That my name is A. B. and that I am* [specifying the addition, profession, or trade of such person], *and that the place of my abode is at* in the county of [and if it is a town consisting of more streets than one, specifying what street]; *and that I have not before polled at this election; and that I verily believe myself to be of the full age of twenty-one years."*

The oath.

" Which oath, or solemn affirmation, the returning officer or officers at such election, and his or their deputies and poll-clerks, is or are hereby authorized and required to administer."

By the 8th section. Persons, in taking the oaths thereby appointed to be taken before returning officers, committing, or suborning others

Punishment of perjury, &c.

to

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to commit wilful perjury, incur the pains and penalties inflicted by the 5. *Eliz. c. 9.* and the 2. *Geo. II. c. 25.*

Bribery oath,
&c.

Every voter previous to his polling, is also (if required) to take the bribery oath; and the oaths of allegiance, supremacy, and abjuration, or being a Quaker or Moravian, to affirm and declare to the effect thereof*.

Returning officer
rejecting votes.

It seems, that a returning officer in taking the poll, acts in a *judicial* capacity. If therefore in the discharge of that duty, he rejects any person's vote tendered to him, without being influenced by *fraud* or *malice*, he keeps within the line of his duty.

2. *Ld. Raym.*
938.
3. *C. Salk.* 19.

In the great case of *Asbby* and *White*, the question was, whether an action at common law would lie against a returning officer for the mere obstruction of a voter in the exercise of his franchise. It was an action brought by a person entitled to vote at Aylesbury, against the defendants, who were the constables, and as such the returning officers, for rejecting his vote tendered to them at the election. After a verdict had been obtained for the plaintiff, on not guilty pleaded, a motion was made in arrest of judgment, on the ground that the action was not maintainable. Three judges (*viz.* *Powell*†,

* Vide *supra* p. 43. 4. 5.

† Mr. Justice Powell thought that an action would lie, after the parliament had determined, that the plaintiff had a right to vote, but not before.
2. *Ld. Raym.* 947.

Powys, and *Gould*) against the opinion of *Lord Chief Justice Holt*, allowed the judgment to be arrested; but afterwards on a writ of error in the house of lords, this judgment was reversed, and judgment given for the plaintiff. From the report of the case by *Lord Raymond* it does not appear, that there was any imputation of the returning officer's having acted from malicious, or other improper motives.

The proceedings in this cause, but particularly the reversal of the judgment by the house of lords, gave considerable umbrage to the commons, they considering both encroachments on their privileges; and accordingly passed the five following resolutions:

1. "That according to the known laws and 26. Jan. 1703.
usage of parliament, it is the sole right of the commons of England in parliament assembled, (except in cases otherwise provided for by act of parliament) to examine and determine all matters relating to the right of election of their own members."

2. "That, according to the known laws and usage of parliament, neither the qualification of any elector, or the right of any person elected, is cognizable or determinable else where than before the commons of England in parliament assembled, except in such cases as are especially provided for by act of parliament."

" 3. That

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3. " That the examining and determining the qualification or right of any elector, or any person elected to serve in parliament, in any court of law or elsewhere than before the commons of England in parliament assembled (except in such cases as are especially provided for by act of parliament) will expose all mayors, bailiffs, and other officers who are obliged to take the poll, and make a return thereupon, to multiplicity of actions, vexations, suits, and insupportable expences, and will subject them to different and independent jurisdictions, and inconsistent determinations in the same case without relief."

4. " That, Matthew Ashby having, in contempt of the jurisdiction of this house, commenced and prosecuted an action at common law against William White and others, the constables of Aylesbury, for not receiving his vote at an election of burgesses to serve in parliament for the said borough of Aylesbury, is guilty of a breach of the privilege of this house."

5. " That, whosoever shall presume to commence or prosecute any action, indictment, or information at common law, which shall bring the right of the electors or persons elected to serve in parliament, to the determination of any other jurisdiction than that of the house of commons (except in cases especially provided for by act of parliament), such person or persons, and all attorneys, solicitors, counsellors, and serjeants

at law, soliciting, prosecuting, or pleading in any such case are guilty of a high breach of the privilege of this house."

Notwithstanding these resolutions, one Patty and three others soon afterwards commenced actions against the constables for rejecting their votes; but in the next session they were voted guilty of a breach of privilege, and committed to Newgate, and their attorney ordered into the custody of the serjeant at arms.

Afterwards, when the violence of the commons was supposed to be abated, some electors for Pembrokeshire whose votes had been rejected, brought actions against the sheriff; but complaint being made to the house of the proceedings, the actions were discontinued; and the house on being informed thereof by one of the members, discharged from their attendance, the several persons who had been ordered to attend when the matter was first mentioned to the house, without making any other order in the business.

9. March, 1767.
31. Journ. 211.

In the notes on the case of Saltash in 1787, 2. Lud. 248. two cases are mentioned by Mr. Luders, which do not appear to have been noticed by the house. The name of the first was *Sargens and Millward*. It was an action brought after the general election in 1784, against the defendant who was the mayor of Hastings. The declaration stated the plaintiff's right, and that the defendant knowing, &c. and wrongfully intending to deprive him, &c.

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&c. refused his vote. The defendant pleaded the general issue; but on the trial the plaintiff had a verdict for 200l. damages. Here the defendant's malice made part of the plaintiff's case. The action being in the common pleas, a writ of error was brought in the king's bench on the judgment which had been signed in the former court; but upon its coming on, the counsel were stopped by the court from proceeding in the argument, as the case of *Ashby and White* in the house of lords, was in point, and so conclusive, that it would be in vain to agitate the question.

2 Lud. 245.

The latter was *Drewe v. Colton*. It was an action brought against the mayor of Saltash by the plaintiff who had tendered his vote as a freeholder of a burgage tenement. The declaration was the same as the former, and both similar to that in the case of *Ashby and White*. The cause came on to be tried by a special jury, before the late Mr. Justice Wilson, at the lent assizes for Cornwall, held at Launceston, March 27. 1787. The counsel for the plaintiff having in the opening his case, declared, that he did not mean to charge the defendant with any thing *malicious*, in his refusal of the vote, only for the *refusal*. Hereupon the defendant's counsel objected to the competency of the plaintiff's proceeding with his evidence, upon the ground of the admission on his part, that the defendant had done nothing wilfully wrong; alledging (as the plaintiff's counsel admitted, that he acted conformably to the usage

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usage of the last thirty years, and to three concurring decisions of election committees; and contending, that the foundations of this action, and of all others against officers of the law in the execution of their duty, was a *wilful* and *malicious* misfeasance. The learned judge at first, inclined to let the plaintiff proceed with his evidence; saying there were two questions for the jury to consider; first, whether the plaintiff had a right to vote; and secondly, whether the defendant had acted maliciously in refusing the vote; and that it might be necessary to go thro' the whole case in order to ascertain these points. But after a full hearing of all the counsel on both sides, his lordship was of opinion, that he ought to direct a verdict to be taken for the defendant, or the plaintiff to be nonsuited without proceeding further. He said the stat. 7. & 8. Will. III. c. 7. which was made to prevent false returns, and gives an action to the party grieved, does not allow it to the candidate himself, unless the return be wilfully false; and it would be very inconsistent to suppose, when the party who is the most interested in the act, and most injured by it, cannot recover damages, except it be wilful; that one much less aggrieved, and who has less interest in the same transaction, should yet be more favoured in the recovery of damages. His lordship mentioned the case of General Burgoyne against Moss the mayor of Preston, which was an action for a false return. Upon the trial of which it appeared,

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&c. refused his vote. The defendant pleaded the general issue; but on the trial the plaintiff had a verdict for 200l. damages. Here the defendant's malice made part of the plaintiff's case. The action being in the common pleas, a writ of error was brought in the king's bench on the judgment which had been signed in the former court; but upon its coming on, the counsel were stopped by the court from proceeding in the argument, as the case of *Ashby and White* in the house of lords, was in point, and so conclusive, that it would be in vain to agitate the question.

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that the mayor (who had acted by Mr. Dunning's advice upon that election) had conducted himself in the same manner as his predecessors had done; and that the class of voters then supported by the resolution of the house, had never been received at any former election. Lord Bathurst who tried the cause, upon this evidence directed the jury to find for the defendant, if they should think, that in the execution of his duty, he had acted according to the best of his judgment, and not maliciously: And they gave a verdict for the defendant, to the satisfaction of the court. Mr. Justice Wilson also observed, that Lord Chief Justice Holt, in the report of the case of Ashby and White, endeavours to establish a different opinion, viz. That an action lies, *generally*, for the mere obstruction of the right; but that the decision of the house of lords upon that case, was founded on a different principle, viz. the wilfulness of the act; and that the same principle was enforced in the justification which the house of lords published of their conduct; which it was supposed, was drawn up by the Chief Justice himself. He said that Lord Chief Justice Holt stood singular in this particular opinion; but however, as the plaintiff was earnest in desiring a special verdict, he would in compliance to the authority of so great a name, direct the question to be put upon the record in that form, in order to have it solemnly argued and determined, if the leading counsel for the plaintiff would declare his

own assent to this opinion of Lord Holt. This was declined, and hereupon the plaintiff was nonsuited. No step was afterwards taken, to renew the question, by moving to set aside the nonsuit.

In the Cricklade case, a poll taken by the constable was offered to be produced to shew that a large majority of the electors would have voted for Mr. Dewar, if the bailiff, who is the returning officer, had not refused to complete the poll on account of a riot, which took place in the church, where the poll was begun. After the bailiff left the church, and the tumult had ceased, the friends of Mr. Dewar applied to the bailiff to renew the poll, but he refusing, all the electors in the interest of Mr. Dewar, went and gave their voices before a constable for him. The friends of the other candidate (in whose interest the bailiff was) were apprised of this poll before the constable, and warned to attend, and give their votes; but none of them did attend.

The counsel in support of the poll, mentioned that in this very borough (1st April 1689) in a case circumstanced like the present, the returning officer, under a pretence of danger, closed the poll before all the electors had voted. The numbers then stood thus: twenty-one for Webb, one of the candidates, and only five for Freke, the other candidate. The returning officer refused to renew the poll, on which it was continued by the constable, and when the two lists

Returning officer
refusing to com-
plete the poll.

1. Doug. 310.

10. Journ. 72,
73.

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were added together, the numbers were, for Freke, fifty, and for Webb only twenty-five. The house allowed the constable's poll, and declared Freke duly elected. And in the case of Liverpool (5th March, 17th 1730), witnesses being examined, as to the mayor's withdrawing himself from the place of polling, before he had taken the suffrages of several persons, who tendered their votes for the petitioner; and a person being called, and examined, and producing a list taken by him of divers persons, who gave their votes for the petitioner, after the mayor had left the place of polling; and the sitting member's counsel objecting against the admitting such evidence; the point was argued, and the counsel being directed to withdraw; the house resolved, "That the paper produced by the witness, containing a list taken by him of persons who voted for the petitioner, after the mayor had left the place of polling, be admitted as evidence of such persons voting."

The counsel on the other side, observed, that it was more necessary now, that the legal returning officer should take the poll, than it was when either of the two former cases happened, since now by the statute of 2. Geo. II. c. 24. every voter is liable to have the bribery oath tendered to him, "which he is to take before the returning officer, or others, legally deputed by him." That this oath the constable could not administer,

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ster, and therefore could not be at all considered as capable of taking a legal poll. The committee after long deliberation resolved, "That the constable's poll should not be given in evidence." And, "That parol evidence should not be admitted to prove what persons polled before the constable."—The committee afterwards resolved, that neither of the candidates (they being both returned in the same indenture) were duly returned; and that the last election, was a void election.

Where it happens that on casting the poll the numbers are equal, the returning officer has not the casting voice unless warranted by custom. This appears from Glanville, where it is said, that "of common right in case of equality of voices, the mayor of a town has no casting or over-ruling voice in the affirmative to carry an election, without the help of custom, or some other special matter, to enable him in that behalf. But the electors ought to continue together, or meet again by adjournment, till they can agree to an election by plurality of voices." In the Winchelsea case it was expressly resolved, "That in an assembly for an election, he which, at the beginning of the election, pronounceth his voice one way, finding the voices equally divided, may, before the assembly dissolved, change his mind, and give his voice another way, and so make a good election that way, by a majority of voices."

Returning officer has no casting voice.

Glanv. 21.
1. Lud. 102.

Glanv. 22.

ELECTIONS FOR CITIES, TOWNS,

In the case of Mitchell, the numbers on the poll were for Howell 27, Wilbraham 21, Hawkins 21, and Boscawen 15. Mr. Howell was allowed by each party to have been duly elected and returned; the only dispute was between Mr. Wilbraham and Mr. Hawkins who were both returned as having a majority of voices. The port-reve, who presided as returning officer, had voted for Mr. Wilbraham, and upon finding the numbers for him and Mr. Hawkins equal, declared, that if he possessed a casting voice he gave it for Mr. Wilbraham, but left the effect of it to future discussion. No argument was used before the committee to support such right in the returning officer; it was given up by Mr. Wilbraham's counsel.

Returning officer
cannot revive the
poll.

Glanv. 71.

In the case of Arundel, Sir Henry Spiller was duly proposed and elected in the first place. For the second, there was proposed Mr. Mill and Sir George Chaworth, about ten of the clock in the forenoon, there being then present fifty-two electors, and no more; whereof twenty-seven were for Sir George Chaworth, and but twenty-five for Mr. Mill, as was afterwards discovered. And there came in four electors more, who all gave voices for Mr. Mill; and then the poll being demanded and granted, it was found by membering of the polls, and so thereupon *declared* and acknowledged, that Mr. Mill, at the time of the polling finished and pronounced, had
twenty-

twenty-nine voices, to twenty-seven, against Sir George Chaworth. Whereupon about twelve of the clock, the mayor refusing to dissolve the assembly, all the electors departed, except the mayor, and the steward, and two more of the electors, who continued there till after five of the clock at night, sending, in the mean time, for such electors as had been formerly absent; and by this means between five and six got the voices of ten more; which made up in all thirty-seven voices for Sir George Chaworth, against twenty-nine for Mr. Mill. A petition was presented in favour of the latter, complaining that the former was unduly returned. Upon this state of the case, the committee and the house, held that Sir George Chaworth was not duly elected and returned; but that Mr. Mill was duly elected, and ought to have been returned. "And touching the continuance there of the mayor, and some others with him after the election finished, which was fully accomplished upon the account, and pronouncing the number of the polls then present, especially by reason of their continuing there in so few a number, and for so long a time, till such an unseasonable hour: in case of a borough where, by presumption, the inhabitants dwell not far off, it was taken to be to no purpose, and the ten voices lastly given to be ineffectual and void, as coming after the election fully past and determined: or else it might be in
the

ELECTIONS FOR CITIES, TOWNS.

the power of an obstinate and wilful mayor, or officer, to continue the election, at his pleasure; and, peradventure, to gain his own purpose, by wearying out the electors with attendance, to see the end or conclusion of the election."

Misconduct in re-
turning officers.

2. Doug. 148.

In the case of Sudbury. The mayor, who is the returning officer, had a thousand copies printed of an extract from the Durham act, 3. Geo. III. c. 15. containing the clause disqualifying free-men admitted to their freedom within the year, and mentioning the penalty of 100l. inflicted by the statute, if they presume to vote; *but omitting the exception in favor of persons who have an inchoate title.* (Vide the second section of that act.) He had himself caused those papers to be distributed among the persons claiming to be enrolled. Some of them taking the alarm, came to ask his opinion, whether they might vote, without incurring the penalty, and received for answer, that they certainly would be liable to it, if they presumed to vote, and if not able to pay, must go to jail. After the committee had settled their opinion, with regard to the merits of the election, before they communicated their determination to the house, they order the mayor, and all the agents and persons belonging to Sudbury to be called in, and the chairman by their direction publicly reprimanded the mayor for his conduct.

In

BOROUGHES, AND CINQUE PORTS.

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In a note on the above case, Mr. Douglas mentions the case of Norwich in 1705, being in point as to the conduct of the mayor of Sudbury. The mayor of Norwich had published a by-law made at an assembly held in Norwich 28th Oct. 1640, enacting, that any one that should give his voice for any man, not free, to be chosen citizen for the parliament, should forfeit to the use of the poor, 5*l.* or suffer imprisonment. The house on this resolved, "That William Blyth, esq; late mayor of the city of Norwich, by printing and publishing a pretended by-law, made in the year 1640, contrary to Magna Charta, in order to terrify the electors of the said city from free and impartial voting, in the late election of members to serve in parliament for the said city, is guilty of an illegal and arbitrary proceeding."

Immediately, or on the day next after the close of the poll, the returning officer is publicly to declare the names of the persons who have the majority of votes, and forthwith make a return, unless upon a scrutiny being demanded by any candidate, or two or more of the electors, he deem it necessary to grant one, which, as has before been observed (in p. 46.) is discretionary in him; though the committee determined in the case of Sudbury, "that the mayor ought not to have refused a scrutiny," and a scrutiny is rarely denied, when demanded.

2 Doug. 177.
15. Journ. 55.

Scrutiny.

25. Geo. II. c
84.

Ph'lips 136. s.
pra 185.

If

ELECTIONS FOR CITIES, TOWNS,

If the scrutiny is granted, the returning officer must proceed therein according to the directions in the 25. *Geo. III. c. 84. s. 1. & 2.* which have already been noticed in the preceding title.

7. & 8. W. III.

c. 25.

Copy of the poll
to be delivered if
desired.

Every returning officer is directed by the 7. & 8. *Will. III. c. 25. s. 6*, if required, forthwith to deliver to any person desiring the same, a copy of the poll taken at the election, on being paid, only a reasonable charge for writing the same, under a penalty of 500*l*.

III. Of the return.

For cities and
towns where writs
issue.

The majority* of votes being ascertained, either by the view, the poll, or the scrutiny, and declared "truly, fairly and publicly," the sheriffs of *cities* and *towns*, counties of themselves, to whom writs of summons issue, are to make their return in the same manner as sheriffs of counties.

For cities and
boroughs where
precepts issue.

The returns for cities and boroughs where precepts issue, must be made immediately, or on the day next after the final close of the poll; unless a scrutiny is granted, in which case, on a

* If it should turn out on casting up the poll, that there is an equality of votes, as in the case of Mitchell just mentioned, the returning officer ought to follow the mode adopted by the officer in that case, and return both the candidates.

general

general election, the 25. *Geo. III. c. 84. s. 1.* enacts, that "every returning officer or officers, acting under a precept or mandate shall make a return of a member or members in obedience to such precept or mandate, at least *six* days before the day of the return of the writ by virtue of which such election has been made; and so that in case of any election, upon a writ issued during a session or prorogation of parliament, and a scrutiny being granted as aforesaid, then that a return of a member or members shall be made within thirty days after the close of the poll (or sooner, if the same can conveniently be done)."

25. G. III. c. 84.

To make a return 6 days before the return of the writ.

On an election during a session, &c. and a scrutiny being granted to be made in 30 days after the close of the poll.

23. *Hen. VI. c. 14.* Every "mayor and bailiff or bailiffs or bailiff where no mayor is, shall return lawfully the precept to the same sheriffs by indentures betwixt the same sheriffs and them to be made of the said elections, and of the names of the said citizens and burgessees by them so chosen."*

How made.

23. H. VI. c. 14.

Indenture.

It was held in the case of Pontefract, "that if the return of the borough to the sheriff, or of the sheriff over to the court, have substance, it shall not be impeached for any want of form, or surplusage in matter." But, "if the return be absolutely and irreconcilably repugnant, then the same is utterly void; as if the same

Glauv. 137.

* Vide a form in the appendix.

ELECTIONS FOR CITIES, TOWNS,

parties, by several indentures of the same date do return two several persons to be burgesses, in one and the same manner, and for one and the same place, to the sheriff, and he, in like manner equally and without distinction, return them over to the court; in such case, neither of the parties so returned, are to be admitted into the house, till the return be amended."

Seal.

Where there is a common seal, it is customary to have that only affixed or annexed, in which case the indenture should purport, that, "the mayor, &c. have set the common seal of the said borough," and the electors, parties to the indenture, sign their names, and separately acknowledge that, to be their seal.

7. Apr. 1679.
Simpson 166.

Where the return annexed purported to be an indenture, but omitted stating the usual form, viz. between the sheriff of the one part, and the mayor, &c. of the other part, but "witnessed that the mayor, barons, and jurats of the port had chosen," and eighteen seals were affixed to it, but not the *corporation seal*, it was held a good return.

1. Apr. 1679.

If there is no common seal, the returning officer and electors ought to have separate seals; but this is not absolutely necessary to the validity of the return; as where the indenture purported to be made between the sheriff on the one part, and the bailiff and burgesses on the other part, &c. in witness whereof,
" they

"they had put their seals," but there was only one seal affixed, and that under the bailiff's name; underneath which there were burgessees names, but no seals, and witnesses were indorsed, which was held a good return. In the same case an indenture sealed by the burgessees to which the bailiff was not a party was held bad. But a return sealed by the mayor or bailiff only, without the burgessees, has often been held sufficient.

Where the precept was directed to one of the burgessees, a return not signed and sealed by him was held bad; and another tendered and signed and sealed by him, was held sufficient. 13. May 1717.

Before the return is delivered to the sheriff, the precept must be indorsed thus: "*The execution of this precept, appears in a certain schedule hereunto annexed;*" and signed by the returning officer. Precept to be indorsed.

On delivering the return with the precept annexed, the sheriff (by his under sheriff) executes a counterpart of the indenture, and delivers it to the returning officer, who has the custody of it. Counterpart.
And the counterpart was held a good return, 23. Jan. 1766. where the original indenture had been stolen.

23. *Hen. VI. c. 14.* "In the same manner at every time that any mayor and bailiffs, or bailiffs or bailiff where no mayor is, shall return other than those which be chosen by the citizens and burgessees, of the cities and boroughs, where Penalties, &c. on returning officers.
23. H. VI. c. 14.
Undue returns.
such

ELECTIONS FOR CITIES, TOWNS,

such election be or shall be made, shall incur and forfeit to the king 40*l*. and moreover shall forfeit and pay, to every person hereafter chosen citizen and burges, to come to the parliament, and not by the same mayor and bailiff, or bailiffs or bailiff, where no mayor is, returned, or to any other person which in default of such citizen or burges so chosen, will sue 40*l*. whereof every of the citizens and burgeses so grieved severally, or any other person which in their default will sue, shall have his action of debt against every of the said mayor and bailiffs, or bailiffs or bailiff where no mayor is, against their executors or administrators, to demand and have of every of the said mayors and bailiffs, or bailiffs or bailiff where no mayor is 40*l*. with his costs in this case expended. And that in such action of debt taken by force of this statute, no defendant in any wise shall wage his law of the said demand, nor have any essoin."

7. & 8. W. III.
c. 7.
False and double
returns.

By the 7. & 8. *Will. III. c. 7.* (supra p. 56.) all false returns are prohibited, and it is thereby declared, that all returns contrary to the last determination in the house of commons, are to be adjudged false, and the party grieved may sue the returning officer, and recover double damages with full costs.

So, by the third section of that act, the party grieved, on double returns, where the same

same are wilfully made, may in like manner sue the returning officers for damages.

By the fourth section, all contracts made to procure returns, are void, and the persons making them liable to a penalty of 300*l*.

10. & 11. *Will. III. c. 7.* (*supra* p. 55.) Sheriffs or other officers having the execution and return of any writ, who do not before the day any parliament is called to meet, and within fourteen days after any election by virtue of a new writ, make return of the same to the clerk of the crown in chancery forfeit 500*l*.

10. & 11. *W. III. c. 7.*
Negligent returns.

25. *Geo. III. c. 84. s. 14.* (*supra* p. 55.) Returning officers, wilfully delaying, neglecting, or refusing duly to return any person, and a select committee having determined that such person ought to have been returned, he may recover double damages, with full costs.

25. *G. III. c. 84.*

H

ELEC-

ELECTORS IN GENERAL.

I. Of persons disqualified to vote.

II. Of votes thrown away, from the ineligibility of candidates.

I. Of persons disqualified to vote.

Minors.
7. & 8. W. III.
c. 25.
4 Inst. p. 51.

PREVIOUS to the 7. & 8. Will. III. c. 25. "Minors" were excluded from voting by the common law, and now by the eighth section of that act, "no person whatsoever under the age of one and twenty years, shall at any time hereafter, be admitted to give his voice for election of any member or members to serve in this present or any future parliament." And every voter (if required) is to swear or affirm that he is twenty one years of age, as he believes.*

Women.
Ibid.

"Women," are also excluded from voting for members, whether they "have freehold or no freehold," or possess any other qualification, giving the right of voting.

Aliens.
12. Journ., 367.

"Aliens" born are disabled to vote by a resolution of the house in 1698. viz. "Resolved,

* Vide supra pp.

That

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That no alien (not being denizen or naturalized) hath any right to vote in elections of members to serve in parliament." And this is on a supposition that they feel no interest for the welfare of the state; and therefore are not to be trusted with the choice of its legislators.

It may be of use to state briefly the legal definition of an alien, and to mention in favour of what persons the law has made exceptions.

An alien generally speaking is one who is born * out of the king's dominions, or allegiance, but the children of the king's ambassadors born abroad were always held to be naturalized subjects. 1. Bl. Com. 373.

And by the 7. *Ann. c. 5. s. 3*, 4. *Geo. II. c. 5*, & 13. *Geo. III. c. 21*. all children born out of the king's ligeance, whose fathers (or grandfathers by the father's side) were natural born subjects, are now deemed natural born subjects themselves to all intents and purposes; unless their ancestors were attainted, or banished beyond

* A natural born subject may now become an alien by his own act, as where any manufacturer, or artificer in wool, iron, steel, brass, or any other metal, clock-maker, watch maker, or any other artificer or manufacturer of Great Britain goes into any country out of his majesty's dominions, to use or teach any of those trades to foreigners; or in case any of his majesty's subjects, being in a foreign country, and there using any of the before mentioned trades, shall not return into this country within six months after warning by any ambassador, &c. of Great Britain, or by one of the secretaries of state, and continually inhabit and dwell within this realm; then every such person is to be deemed an alien. 5 *Geo. I. c. 27*.

ELECTORS IN GENERAL.

sea, for high-treason; or were at the birth of such children in the service of a prince at enmity with Great Britain; but they cannot claim any estate or interest unless the claim be made within five years after the same accrues.

Denizens, &c.

12. Journ. 367.

May vote.

But an alien born by becoming a "*Denizen*" (when qualified in other respects) may vote at the election of members to serve in parliament, *a fortiori*, aliens born when *naturalized* by act of parliament, may vote.

13. G. II. c. 3.

13. G. II. c. 7.

20. G. II. c. 44.

22. G. II. c. 45.

1. G. III. c. 25.

13. G. III. c. 25.

Every foreign seaman, who in time of war serves two years on board an English ship, by virtue of the king's proclamation, is *ipso facto* naturalized; and all foreign Protestant and Jews, upon their residing seven years in any of the American colonies, without being absent above two months at a time, and all foreign protestants serving two years in a military capacity there, or being three years employed in the whale fishery, without afterwards absenting themselves from the king's dominions for more than one year (and not incapacitated by the 4. *Geo. II. c. 21.*) are to be (upon taking the oaths of allegiance and abjuration, or in some cases an affirmation to the same effect) naturalized to all intents and purposes, as if they had been born in this kingdom, except as to those incapacities which aliens, naturalized by parliament are subject to.

An

An "*ideot*," or natural fool, is one who hath had no understanding from his nativity; and therefore is presumed by law never likely to attain any. For which reason he is incapable of voting.

Ideots.

1. Bl. Com. 303.

A man who is born "*deaf, dumb, and blind*," is looked upon by the law in the same state with an ideot; he being supposed incapable of any understanding, as wanting all those senses which furnish the human mind with ideas, and therefore like an ideot, is disabled from voting.

Persons deaf, dumb and blind.

Co. Litt. 42.

A "*lunatic*," or *non compos mentis*, is one who hath had understanding, but by disease, grief, or other accident hath lost the use of his reason. He being therefore incapable of conducting his own affairs, is excluded by the common law from voting. There are some lunatics who enjoy lucid intervals; if therefore during the lucid interval he is capable of declaring his vote, and repeating the oaths that may be required of him, a returning officer would not be justified in rejecting his vote.

Lunatics.

1. Bl. Com. 304.

20. Journ. 77.

27. Journ. 177.

In the case of Oakhampton, the objection to one Robins was insanity. He was extremely affected, with the noise at the poll, being upwards of 75 years old, and was troubled with a paralytic tremor. It appeared that when the ordinary questions were put to him, instead of answering he repeated them; but on his wife's being sent for, she asked him who he voted for, to which

1. Fraser 162.

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he named two gentlemen who were candidates at a former election, one of whom stood in the same interest with the sitting members, for whom the voter had promised to vote. Several persons who knew him said, that when undisturbed he was sensible, and capable of performing any serious act; and when the bribery oath was tendered him, he repeated the words and kissed the the book. The principal ground of the objection was, that however sane his intellects might be at other times, at the poll he knew not what he did. But the committee allowed his vote.

Peers:

“*Peers*,” are excluded from voting by the following resolution of the house, made at the commencement of every session, viz. “That no peer of this realm hath any right to give his vote in the election of any member to serve in parliament.”

Papists.

2. Lud. 567.

A voter in the Bedfordshire case was objected to as being a papist. In answer it was said, that the voter had taken all the oaths required of him at the poll, and if the other party chose, they might have tendered the oath of abjuration to him, which was the only trial they could make of his religion, and at that time only. The committee being of that opinion the objection was given up.*

Outlawry

* Since this case was decided, persons professing the popish religion, have been relieved from a variety of penalties and disabilities by the 31. Geo. III. c. 32. on making the declaration, and taking the oath of allegiance and abjuration

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Outlawry is a punishment inflicted for a contempt, in refusing to be amenable to the justice of a court having competent authority. It is putting a man out of the protection of the law, so that he is incapable to bring an action for redress of injuries; and it is also attended with a forfeiture of all one's goods and chattles to the king. It does not appear that there has been any determination of the house of commons as to outlaws, but it has been a cause of objection to voters in several instances.

Outlaws.

Co. Litt. 128.
1. Rel. abn. 302.
3. Bl. Com. 284.

An *excommunicated person* by the common law is disabled to do any act that is required to be done by one that is *probus et legalis homo*. He cannot serve upon juries, cannot be a witness in any court, and which is the worst of all, cannot bring an action either real or personal, to recover lands or money due to him. But he has never been expressly excluded by a determination from voting, though formerly several have been objected to on that account.

Persons excommunicated.

3. Bl. Com. 102.

In the case of Sudbury, one of the questions was, "Whether persons convicted and attainted of felony are disqualified to vote." And the committee determined they were.

Felons.

Phillips 478.
139.

jurisdiction therein mentioned; but as that act extends to relieve them, only in the particular cases specified in it, and that of voting for members of parliament not being one, it seems they are still incapacitated, on refusing to take any of the oaths, which may be required of voters previous to their polling.

H 4 By

Persons convicted of bribery.

2. G. II. c. 24.

By the 2. *Geo. II. c. 24. s. 7.* * Every person convicted of bribery is for ever disabled to vote in any election of members to parliament, and is likewise subject to a forfeiture and other disabilities, therein mentioned.

Persons convicted of perjury or subornation of perjury.

Ibid.

By the sixth sect. of the last mentioned act. "No person convicted of wilful and corrupt perjury, or subornation of perjury, shall after such conviction, be capable of voting in any election of any member or members to serve in parliament."

Persons receiving alms.

2. Doug. 126.

The receipt of *alms*, † is a disqualification by the common law of parliament; but as a person who is at present in indigent circumstances may afterwards become affluent or independent, and *vice versa*, it cannot be supposed that the receipt of or alms, of any particular charity (in cases where that disqualifies) should operate at any unlimited distance of time. Some line must be drawn: and that line by the established custom of parliament, seems to be one year before the election, unless in particular cases, where either by special usage, a determination of the house (as in the case of Reading), or an act of parliament (as in London) the disqualification by alms is extended to two years.

When received within the year are a disqualification.

14. Journ. 42.

18. Journ. 286.

Philipps. 161.

2. Lud. 365.

Unless extended by usage or parliament.

Reading,

16. Journ. 26.

* Vide this act in the appendix.

† "Alms" is taken from the French word "*aumône*," anciently written "*almofnes*," and that from the Greek word "*ἐλεημοσύνη*," which is thus defined by the grammarians, "*Omne beneficium quo calamitosis prosequimur*." 2. Doug. 120. In the Taunton case, "alms" was admitted to mean, parochial collection, or parish relief. 1. Doug. 370.

It

It has been the cause of much dispute before select committees, whether the receipt of parish relief within a year before the election, is a disqualification at common law, equally affecting voters of all descriptions, 'and for all places; but it should seem from the principle on which persons are at all disqualified, that it ought to affect every voter. And this general disqualification is in some measure acknowledged by the legislature; for in London, persons who have received any alms whatsoever, within two years before the election, are disabled to vote by the 11. Geo. I. c. 84. s. 14. And by the 18. Geo. III. c. 59. s. 5. it is provided, "That any parish relief which shall be given to the family of *any* militia-man, during the time of actual service, shall not deprive such militia-man from voting for the election of any member to serve in parliament."

Whether they affect all voters?

It was admitted in the Bristol case, that free-men living in alms-houses should not be polled, and that alms-men are no where entitled to vote.

Alms-men.
1. Doug. 177.

In the Gloucestershire case, the receipt of alms is reckoned in the list of those whom the petitioner had disqualified, but whether the votes were disallowed, does not appear; though it is afterwards stated, that the number of paupers being nearly equal, it was of little consequence to the parties to have the question argued.

Freeholders.
Gloster. 178.

Yet, as to the vote of John Hougland, who was objected to in the Bedfordshire case, as having

Freeholders in
possession of their
freehold.
2. Lud. 563.

ing

ing received parish alms within a year before the election, it was held that he was not thereby disqualified, and the following motion negatived, viz. "That parish alms paid to a freeholder, do invalidate his vote although he continues in possession of a freehold of the clear yearly value of 40s." Afterwards the committee explained this resolution to mean, "That parish relief made no disqualification, while the voter retained the possession of his freehold."

Ibid. 564.

2. Lud. 567.

Though, in the Cricklade case, (contrary to the determination in the last mentioned case), as to the vote of Robert Strange, a freeholder, the committee resolved, "That Robert Strange having within twelve months before the election received parish relief is thereby disqualified from voting."

Gloster. 125.

And in the Gloucestershire case above-mentioned, the committee allowed evidence to be produced to impeach a vote, that the overseers had given relief to the voter's wife for his use.

Philipp's 2:4

In the Sudbury case it was doubted how far the wife or children of a voter *living separate* from him, could disqualify him, by their receiving parish relief, but the committee came to no resolution. Nor did they determine on an objection made to several voters as having received parish relief *antecedent* to the twelve months preceding, and also *subsequent* to the election; but only directed the counsel to proceed to give evidence

Ibid. 161.

evidence

dence as to the kind of relief those persons had received, and under what circumstances; though it does not afterwards appear that any such evidence was produced, perhaps from an opinion that the objection was not tenable.

The time limited within which the receipt of alms is a disqualification by the *lex parliamenti*, has been held, not to extend to voters under the following circumstances. In the spring of the year 1783, * the small-pox became prevalent in the town and neighbourhood of Cricklade. The parish officers endeavoured to prevent the infection from spreading, but it extended so generally as to frustrate their endeavours. At a vestry it was agreed to propose an inoculation of the lower sort at the expence of the parish. An agreement was accordingly made with an apothecary, and public notice of it was given in the town. The entry in the vestry-book relating to the undertaking is in these words, " 10. Apr. 1783. It is agreed that the families shall be inoculated at the parish expence, except those who can assist themselves." A great many applied: Some were people who earned a livelihood by their labour, and maintained their families in general, without any assistance from the parish; and were rated and paid to the poor, but yet could not have born the expence of the

When they do
not disqualify.

2. Lud. 356.

* The election happened in April 1784. The time of the small-pox was in April and May 1783.

small

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small-pox in their families, without assistance from the parish. Some were of that class called at Cricklade second poor, who did not receive relief from the parish, but from funds invested in the bailiff and parish officers as trustees, appropriated to charitable uses there, and occasionally distributed, which were never applied to the relief of those to whom the parish collection was given, called the weekly poor. Others were of the class of weekly poor. Some had only the medical expences of the small-pox defrayed; others had themselves and families maintained likewise, as long as the effects of it continued. The trustees of the above charitable funds agreed to apply 10 l. out of their fund towards the expences of the second poor. The resolution of the committee was in these words, viz. "That those persons who submitted themselves or their families, to be inoculated in the year 1783, by the invitation of the parishes of Cricklade, and received relief in consequence of such inoculation, were not thereby disqualified from voting at the last election."

2. Frazer 454.

So, in the Cirencester case, the small-pox broke out there in the commencement of 1790. Several persons sent their children to the parish pest-house to prevent the contagion from spreading; and were generally attended by the parish apothecary, though some employed their own apothecary. The circumstances of these persons

were

were different; some were able to support their families, and sent their children provisions; others were paupers. The committee resolved, "That those persons who were admitted, or any part of whose families have been admitted into the pest-house on account of the small-pox, without receiving any other parish relief, were not thereby disqualified from voting at the last election at Cirencester."

"Charity" is defined to be, sums arising from the revenue of certain specific funds which have been established or bequeathed for the purpose of assisting the poor. Some charities are of such a nature as to disqualify the persons who receive them. As in the case of Bedford, where the right of election is, "in the burgessees, free-men and inhabitants, being householders of Bedford, *not receiving alms*," the committee considered the charity called *Welborn's*, as within the disqualifying words of the resolution. This charity was founded by one Robert Welborn in 1716, who left a close now of the value of 4l. 10s. per annum to the ministers and *overseers of the poor* of St. John's parish in Bedford, to be distributed to the poor on new year's-day. It is distributed in sums of 3 or 4 shillings to each person. And although it was proved, that the usage and reputation of the borough was in favor of persons receiving it, voting for members, and that they are often rated to the poor; the com-

Persons receiving charities.

1. Doug. 370.

2. Doug. 113;
10. Journ. 376.

Welborn's charity in Bedford.

committee resolved, " That the persons who voted at the last election for Bedford having received Welborn's charity were thereby disqualified."

2. Doug. 106.

21. G. I. c. 13.
s. 14.

It was said by the counsel in the course of their argument in the above cause, that the words in the statute for regulating elections in the city of London, which are these; no person or persons whatsoever shall have any right to vote at any election of a citizen or citizens to serve in parliament. " Who have within the time aforesaid [two years] had or received *any alms* whatsoever;" have been constantly understood and construed to extend to *all charities*.

Charity doubtful.

2. Doug. 330.

Smith's charity
in Haslemere.

In the case of Haslemere, six were objected to as having received Smith's charity. In the reign of Charles the first, one Henry Smith of Silverstreet, London, left all his real and personal estates to trustees to be distributed from time to time to a great many different parishes, particularly to all those in Surry but three, for the setting of the *poor* to work, for the binding poor apprentices, and teaching and educating poor children. The rents of this donation amount to about 1600l. a-year. In most of the parishes, their share is paid to the overseers of the poor, and it is understood by the trustees, that they are to distribute it to such poor parishioners, as do not receive the ordinary parish relief, and the overseers make a return to the trustees of the person

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persons who have received the charity. It was contended that this charity was in the nature of alms, or parish relief, being substituted instead thereof to those who are objects of parochial assistance, and distributed by the same persons. That although alms are not mentioned in the last determination, they must be considered as working a disqualification by the common law of parliament. The witnesses never heard that the receipt of Smith's charity was considered in the borough as a disqualification, and on the other hand they did not remember any instances of persons whom they knew to have received it, coming to poll. But the committee came to no resolution as to these six voters.

In Bedford there are three charities called Harpur's charity, Hawe's charity, and the before-mentioned charity called Welborn's, and the voters who partook of them were all objected to, as being thereby disabled. It appeared as to the first charity called *Harpur's*, That by letters patent granted by King Edward the sixth 15th of August 1552, licence was given to the mayor, bailiffs, burgesses and commonalty of the town of Bedford to erect a free school and liberty to acquire lands, &c. to the clear yearly value of 40l. for the sustentation of the master and usher, for the marriage of poor maids of the said town, for poor children there to be nourished and informed, and also, "*the surplusage coming or remain-*
ing

Charities not disqualifying.

10. Journ. 376.

2. Doug. 93.
Harpur's charity
in Bedford.

ELECTORS IN GENERAL.

“ing of the premises to distribute in alms to the poor of the said town for the time being.” Sir William Harpur in consequence, did in 1566, grant land and houses in Bedford, and land in the parish of St. Andrew, Holborn, in the county of Middlesex, to the said mayor, &c. for the sustentation of the said master and usher, for the marriage of poor maids of the said town, and for poor children there to be nourished and informed *“according to the form of the said letters patent.”* The estate in St. Andrew, Holborn, having been built on, and increasing to a great value; it became expedient to have an act of parliament, to regulate the management and appropriation of the revenues, and that act directs, *“That the surplusage of the rents and profits shall be distributed in alms to the poor of the said town, for the relief and support of poor decayed housekeepers, and other proper objects.”* In the original bill there was the following proviso; *“That no freemen, inhabitants of the said town of Bedford, receiving benefit from the said charity estate, in any manner whatever shall thereby be disqualified from voting for members of parliament for the said town of Bedford.”* But on the third reading it was left out. It was proved by a number of witnesses; that this charity had been distributed to many persons, who paid to church and poor; to some who paid parish taxes to the amount of
nine

nine shillings; and was distinguished from parish pay, by the name of *ball-money* (being distributed at the common hall). That persons receiving the charity had voted at former elections, and their right had never been disputed; though persons receiving parish pay had always been rejected. After the point had been argued, the committee resolved, "That persons receiving Sir William Harpur's charity, are not thereby disqualified, within the meaning of the determination of 12th April, 1690, from voting for members of parliament for Bedford."

The nature of *Hawes'* charity was this, certain lands were left by one Hawes for the use of the poor of the parishes of St. Mary and St. Paul in Bedford. Of the yearly profit, two thirds are distributed yearly *in bread*, to the poor of the parish of St. Paul, the other third to the poor of the parish of St. Mary. It was proved that usage and reputation were in favor of the votes of persons receiving this charity, that they are often rated to the poor, and that the bread was mostly received by wives and children. On the question being put in the committee, that the persons at the last election for Bedford having received Hawes's charity, were thereby disqualified, it was resolved in the negative.

2. Doug. 113.
Hawes' charity
in Bedford.

The committee in the Gloucestershire case resolved, *nem. con.* "That William Virgo having within twelve months before the election, received

Gloster 178.

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part of a sum given by will to the poor of the parish of Thornbury, who are not on the parish books; and received no monthly pay, is not thereby disqualified from voting, &c.

Coles' and King's
charities in Sud-
bury.
Philips 148.

The two charities in Sudbury of Coles' and King's, were also held not to disqualify. The charity called Coles', was a devise by one Martin Cole bearing date 29th Sept. 1620, of 14*l.* per annum issuing out of lands, to trustees, directing them amongst other things to purchase a certain number of yards of canvass to be made up into shirts and shifts, and then to be delivered to the ministers, church-wardens and overseers of the poor, to be by them given to twenty-five poor men, and twenty-five poor women of Sudbury—King's charity was a devise in like manner by one Nathaniel King, by will 15th April 1668, of 50*s.* to purchase 100 loaves of bread, and a loaf to be given to each person, who had received the shirt and shift. It was said by the counsel, that there is always a list made out by the trustees of those who are to receive the charities, and delivered to the officers who have nothing to do with *parish pay*, the paupers being under the government of a work-house corporation, established by law antecedent to the act of Elizabeth. That the usage is in favor of those who received these charities: they have always voted. The committee resolved, "that the freemen of Sudbury, having received the dona-

donations, under the wills of Nathaniel King and Martin Cole are not thereby disqualified from giving their votes for members to sit in parliament."

1. Lud. 193.
Stockman's charity in Downton.

In Downton (a burgage tenure borough) a voter was objected to as a pauper, having partaken of *Stockman's* charity. In the year 1626, one William Stockman by a deed of feoffment gave certain lands to seven feoffees, to the uses and trusts named in a schedule, part of the deed. The second item of this schedule is, "That the rents shall be distributed yearly among such poor craftsmen and poor labourers, as shall be surcharged by children, within the said parish, and for their relief as shall seem best to the feoffees, with the consent of the vicar or curate of the parish, and not to go or be employed to the increase of the church-box of the said parish." By the fourth item it is directed, "That this provision shall not be accounted any abatement of the collection for the church-box, or any other relief of the poor, usually provided for the poor of the parish." These words have been understood to direct that this charity shall not be given to those, who receive parish relief, and the trustees never give it to any such: It is a temporary relief, and the custom is to distribute it annually in different sums of money to those whom the trustees think in want of it. The voter John Esdal had received it for three years,

and within a year before the election. The committee resolved to admit his vote.

1. Doug. 373.
Chelsea and
Greenwich pen-
sioners.

2. Doug. 116.

Ibid. 114.
St. John's hos-
pital at Bedford.

In the Taunton case, it was determined by the select committee, that *Chelsea-pensioners* might vote. And the counsel in the course of the argument in the case of Bedford, seem to consider the case of *Greenwich-pensioners* as similar. In Bedford there is an hospital called St. John's, founded in the year 980, by one Robert de Parys, for six poor men to pray for his soul and the souls of several of his relations, and to attend divine service. It was a sort of charity, and is now in every respect a corporation. The rector of the parish where it lies is master, there is a common seal, and the brethren, as they are called, are parties to all leases made of the land. Since 1606, by an order of the king and council they receive each nine-pence a week from the revenues of the land. It was contended that the brethren are a corporation; have a *permanent* interest; are like fellows of colleges, and like them would be entitled to vote at county elections; that if one was turned out he might have a *mandamus* to reinstate him, and therefore what they receive is of a certain and stable nature, and does not subject them to influence like parish relief, but that they may be compared to Chelsea and Greenwich pensioners. And the committee negatived the following motion, "That the master and brethren

brethren of Saint John's hospital were disqualified from voting, &c."

22. *Geo. III. c. 41.* "No commissioner, collector, supervisor, gauger, or other officer or person whatsoever, concerned or employed in the charging, collecting, levying or managing the duties of excise, or any branch or part thereof; nor any commissioner, collector, comptroller, searcher, or other officer or person whatsoever, concerned or employed in the charging, collecting, levying, or managing the customs, or any branch or part thereof; nor any commissioner, officer, or other person concerned or employed in collecting, receiving, or managing, any of the duties on stamped vellum, parchment, and paper, nor any person appointed by the commissioners for distributing of stamps; nor any commissioner, officer or other person employed in collecting, levying, or managing any of the duties on salt; nor any surveyor, collector, comptroller, inspector, officer, or other person employed in collecting, managing, or receiving the duties on windows or houses; nor any postmaster, postmasters general, or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting, or managing the revenue of the post-office, or any part thereof; nor any captain, master, or mate, of any ship, packet, or other vessel employed by or under the postmaster or postmasters general in

Revenue officers.

22. G. III. c.

41.

No commissioner or officer employed in collecting or managing the duties of excise, customs, &c. shall have any vote in the election of members of parliament.

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conveying the mail to and from foreign ports, shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron to serve in parliament for any county, stewartry, city, borough, or cinque-port, or for chusing any delegate in whom the right of electing members to serve in parliament, for that part of Great Britain called Scotland, is vested: And if any person, hereby made incapable of voting as aforesaid, shall nevertheless presume to give his vote, during the time he shall hold, or within twelve kalendar months after he shall cease to hold, or execute any of the offices aforesaid, contrary to the true intent and meaning of this act, such votes so given shall be held null and void to all intents and purposes whatsoever; and every person so offending shall forfeit the sum of one hundred pounds; one moiety thereof to the informer, and the other moiety thereof to be immediately paid into the hands of the treasurer of the county, riding, or division, within which such offence shall have been committed, in that part of Great Britain called England; and into the hands of the clerk of the justices of the peace of the counties or stewartries, in that part of Great Britain called Scotland, to be applied and disposed of to such purposes as the justices at the next general quarter session of the peace to be held for such county, stewartry, riding, or division, shall think fit, to be

Penalty on persons voting who are disqualified by this act.

be recovered by any person that shall sue for the same, in the manner therein mentioned; and the person convicted become incapable of ever executing any office or place of trust under his majesty, his heirs and successors.

2. "That nothing in this act contained shall extend, or be construed to extend, to any person or persons for or by reason of his or their being a commissioner or commissioners of the land tax, or for or by reason of his or their acting by or under the appointment of such commissioners of the land tax, for the purpose of assessing, levying, collecting, receiving, or managing the land tax, or any other rates or duties already granted or imposed, or which shall hereafter be granted or imposed by authority of parliament."

Not to extend to commissioners of the land tax, or persons acting under them,

3. "That nothing in this act contained shall extend, or be construed to extend, to any office now held, or usually granted to be held, by letters patent for any estate of inheritance or freehold."

Nor to offices held by letters patent for any estate of inheritance;

4. "That nothing herein contained shall extend to any person who shall resign his office or employment on or before the said first day of August, 1782."

Nor to persons who shall resign their offices before Aug. 1, 1782.

5. Prosecutions to be commenced within twelve months after the forfeiture is incurred.

Limitation of actions.

"No commissioner, collector, supervisor, gauger, or other officer or person whatsoever, concerned or

Officers of excise.

ELECTORS IN GENERAL.

1 Fra. 164.

employed in the charging, collecting, levying or managing the duties of excise, or any branch or part thereof."—These disabling words were said to extend to one Henley, who it appeared had been discharged by the board more than five years, and not being on the restored list, would never be appointed an officer again; but he was sometimes employed by the collector of the district, during the sickness or absence of other excise officers, for which the collector paid him 40s. per annum, though it was discretionary in the board to allow it. But the committee held the vote good.

Sub-distributor
of stamps.

2 Lud. 552.

"Nor any commissioner, officer, or other person concerned or employed in collecting, receiving or managing, any of the duties on stamped vellum, parchment, and paper, nor any person appointed by the commissioners for distributing stamps."—John Arch was objected to as being a sub-distributor of stamps and as such disqualified by this part of the act. The voter had been appointed by the distributor of stamps for the county, a sub-distributor for the district of Shefford. The nature of the appointment is this, as related by the distributor for Bedfordshire. The distributor appoints whom he pleases, as his assistants in the distribution, and makes a return of their names to the board of commissioners once a year. But the commissioners exercise no control over them; though

though if the commissioners were to disapprove of any person, the distributor would remove him, by his own authority. The distributor is answerable for what money the sub-distributors receive, and they to him. The profit to the sub-distributor is 2*l.* 10*s.* per cent. to the distributor 5*l.* per cent. The former makes out licences for carts, waggons and horses, and signs them with his own name. This vote was held good. The same objection in the Buckinghamshire case, received the same determination. It was also argued in the Cricklade case, though not determined. But in the second case of Oakhampton, it was decided that the sub-distributor had a good vote.

1 Fra. 164.

"Nor any surveyor, collector, comptroller, inspector, officer or other person employed in collecting, managing, or receiving the duties on windows or houses."—Thomas Barringer was objected to in the Bedfordshire case, as being a collector of the duties on houses and windows, and therefore disqualified by this part of the statute. By the 20 Geo. II. c. 3. all former duties upon houses and windows were repealed and new ones imposed with new powers and a new mode of collection added.

Collector of duties on houses and windows.

2 Lud. 541.

20. G. II. c. 3.

The 6th section enacts, That all the commissioners of the land tax for the year 1747, or who should thereafter be appointed commission-

ers

ELECTORS IN GENERAL.

ers of the land tax, should be commissioners for putting in execution that act; which said commissioners are directed to meet together at the most usual place within their counties, &c. on or before the 18th of April 1747. And on an appointed day the assessors shall return the names of two or more able and sufficient persons within the bounds or limits of those parishes or places where they shall be assessors respectively, to be *collectors* of the several rates and duties granted to his majesty by that act; for whose paying to the receiver general such money as they shall be charged withall the parish or place by whom they are so employed shall be answerable. And every assessor so appointed shall, before he take upon him the execution of the said employment take the oaths of allegiance and supremacy.

7. The particular duty of the *collectors* is prescribed to them, and they are required to pay over their receipts to the receiver general, his deputy or deputies.

9. The *collectors* are enjoined and required to collect and pay, &c. under the several penalties and forfeitures in the act provided.

30. Impowers the *Lords of the treasury* to appoint *surveyors* and *inspectors* for examining and controlling the assessments and certificates of the *collectors*.

43. Impowers

43. Impowers them to give salaries to the *surveyors* and other officers for their services.

The material parts of 20 Geo. II. c. 3. are preserved in the subsequent acts by which the same duties have been continued or extended.

The committee resolved, "That the voter was not disqualified." And the following motion was negatived, "That any collector or assessors appointed by or acting under the commissioners of the land tax, whether acting as such, or as commissioners for the management of the duties on houses and windows, or for the management of any other rates or duties imposed or to be imposed by parliament, are disqualified from voting at elections of members to serve in parliament."

The same objection was made in the Buckinghamshire committee, and received a similar determination. 2 Lud. 552.

"Nor any *postmaster, postmasters general, or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting, or managing the revenue of the post office, or any part thereof.*"—Thomas Godfrey Burr, Post-master, &c.
Ibid. 562.
 was objected to in the Bedfordshire case as post-master of Luton. He held the office under a regular appointment, but it was executed by John Smith an Innkeeper there, who by Burr's agreement

agreement received the salary for his own use. The correspondence with the post office in London was carried on in Burr's name, and orders from thence were sent to him, not to Smith. The voter was a brewer, and Smith rented the Inn and some land of him. This vote was disallowed.

Husband of post-mistress.

2 Lud. 558.

And so was that of John Hempsted who was the husband to the post-mistress in Newmarket. She was appointed to the office in the usual form of deputation in 1778, and married the voter in 1781.

Sub-deputy in the post-office.

Ibid. 562.

But James Wilson was objected to, as employed in collecting the revenues of the post-office. He was appointed by the post-master at Luton, a sub-deputy to distribute the letters and receive the postage for the parish of Barton, within the Luton district; his own profit was a penny a mile upon each letter, above the regular postage. The sub-deputies are generally appointed with the approbation of the post-master general, though not by him. Their appointment is not in the post office books. His vote was deemed good.

Mail-guard.

2 Fra. 454.

In the Cirencester case, a person was objected to as being mail guard, and thereby disqualified. But the committee resolved, "that the office of guard of a mail-coach, does not operate as a disqualification under the act of 22 Geo. III. commonly called Crewe's act."

II. Of

II. Of votes thrown away from the ineligibility of candidates.

The votes of electors are thrown away, where the ineligibility of a candidate is clear and pointed out to the voters at the poll, and in some cases the unsuccessful candidate with a smaller number of electors has been seated.* The most remarkable case of this sort, which has happened, was that of Mr. Wilkes's, who had been expelled the house and declared incapable of being elected a member to serve in that parliament. Notwithstanding which he was twice returned for Middlesex without any op-

32 Journ. 223.

* In the case of Abingdon. Mr. Mayor when he was high-sheriff for the county of Berks, had been elected for this borough, which is within the county. Before the committee, it was questioned, whether in case of the ineligibility of a sheriff for a borough within his county, the votes given for him were not thrown away, the electors having had notice at the election, that Mr. Mayor was not eligible; and if they were, whether the candidate with the smaller number of votes was not entitled to the seat. But the committee determined generally, that it was a void election, 1 Doug. 419.

And in the Colchester case. Mr. Potter's qualification, was expressly objected to in the petition; but for not complying with the standing order of the house of the 21st of Nov. 1717. (Vide infra "members.") the committee determined the election, so far as it related to him, a void election. Upon which the counsel for the petitioner claimed the seat for their client, and for that purpose, proposed to disqualify so many votes for Mr. Potter, as would leave a majority in favour of their client, saying, that if the electors will make their representative one who is unworthy of the place, they must suffer for their folly. But the committee refused to let the counsel for the petitioner enter into any examination, relative to the disqualification of votes on the poll 1 Lud. 442.

position,

position, and as often his election declared void. At the third election, he was opposed by Mr. Luttrell, who had only 296 votes, when Mr. Wilkes had 1143, on which Mr. Wilkes was again returned, but the house resolved Mr. Luttrell ought to have been returned and amended the return accordingly. It does not appear that any public notice was given at the election of Mr. Wilkes's incapacity, but the house no doubt thought that as the two former elections had been set aside on that account, the freeholders were not ignorant of it.—These proceedings were afterwards expunged from the journals “as being subversive of the rights of the whole body of electors of this kingdom.”

38 Journ. 977.

1. Lud. 455.

In the case of Fife, mentioned in Mr. Luder's notes on the case of Colchester, General Skene and Mr. (now Sir John) Henderson were candidates; the former was returned; the latter petitioned, and alledged, that the General was ineligible by the 6. *Ann. c. 7.** by holding the place of Baggage-Master of the forces, and Inspector of the roads in Scotland; one or both of which were new offices of profit created subsequent to the 25th of October 1705. At the election the freeholders were apprized of the General's incapacity, and that they would throw away their votes if they elected him. The

* Vide infra “members.”

General then admitted his holding the offices, but denied that the disqualification created by the statute of Ann attached upon either of them, because they were *military* offices and *old* ones. He was elected by the majority. But the committee were of opinion, that the novel creation of one of the offices was notorious and within the statute of Ann; and that under the circumstances before mentioned, the electors who had voted for the sitting member had thrown away their votes, and seated the petitioner, who had the minority on the poll.

1. Lud. 560.

And in the Kirkudbright case after mentioned * where the petitioner was returned on a second collection, after the electors had notice that the committee on the first election declared him guilty of bribery at that election, and that he was therefore ineligible; the committee in the second case avoided his election, and seated the other candidate who had the minority of votes.

Ibid. 72.

* Vide infra "bribery."

ELEC-

ELECTORS FOR COUNTIES.

- I. *Of the nature of the estate, qualifying persons as electors for counties.*
- II. *Of the value of the estate; how ascertained, and reduced.*
- III. *Of fraudulent and occasional votes.*
- IV. *Of votes lost from informality in giving them at the poll.*

I. *Of the nature of the estate, qualifying persons as electors for counties.*

Electors must
have freeholds
of 40s. per ann.

3 H. VI. c. 7.

THE first regulation made by the legislature, as to voting in respect of freehold, was by the 3 Hen. VI. c. 7.* which ordains, that “the knights of the Shires to be chosen within the same realm of England to come to the parliaments of our lord the king hereafter to be holden, shall be chosen of every county of the realm of England by people dwelling and resident † in the same counties, whereof every one

* Lord C. J. Holt in the case of Ashby and White, says, “before this statute, any man that had a freehold, though ever so small, had a right of voting in counties.” *Ld. Raym.* 950.

† This was entirely disregarded, and is now repealed by the 14 Geo. III. c. 58.

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of them shall have *free land* or tenement of the value of 40s. * by the year, at least above all charges." And "every sheriff of the realm of England shall have power by the said authority, to examine upon the holy evangelists every such chooser, how much he may expend by the year."

But as this statute did not require that the freehold should be within the county, the 10. † *Hen. VI. c. 2.* ordains that "every man shall have *freehold* to the value of 40s. by the year at the least above all charges, *within the same county*, where every such chooser will meddle of any such election."

Freeholders to be
within the coun-
ty.

10. H. VI. c. 2.

A freehold (*liberum tenementum*, or frank tenement) is defined by Britton to be "the possession of the soil by a freeman." And St. Germain tells us "that the possession of the land is called in the law of England the frank tenement or freehold." Such estate therefore and no

Freehold what.

Britton. c. 32.

Dr. and Stud. b.
1. d. 22.

* It is observed, that 40s. per annum in the time of Henry VI. would with proper industry furnish all the necessaries of life, and render the freeholder, if he pleased an independent man. For Bishop Fleetwood in his *chronicon preciosum*, written at the beginning of the present century, has fully proved 40s. in the reign of Henry VI. to have been equal to 12l. per annum in the reign of Queen Anne; and as the value of money is considerably lowered since the bishop wrote, Sir William Blackstone observes, that what was equivalent to 12l. in the bishop's days, is equivalent to twenty at present. 1 *Bl. Com.* 172.—And it also observed by the same able commentator, that it requires fifty times the property to enable a man to kill a partridge, as to vote for a knight of the shire. 4. *Bl. Com.* 175.

† From this period (1432.) till a few years after the revolution, which upwards of two centuries and a half, no other regulations were made as to county voters!

K

other

Litt. f. 59.

2 Bl. Com. 104.

other as requires actual possession of the land is legally speaking freehold. And it is laid down by Littleton that where a freehold shall pass, it behoveth to have livery of seizin, as therefore *estates of inheritance* and *estates for life* could not by common law be conveyed without livery of seizin, these are properly estates of freehold; and as no other estates were conveyed with the same solemnity, therefore no others are properly freehold estates.

Freehold of inheritance.

Litt. f. 1.

A freehold (or estate) of inheritance, is where a person is seized of lands, tenements or hereditaments, to hold to him and *his heirs*, either generally or specially. In the first case where a man holds to him and his heirs for ever, without qualification, he is usually styled "tenant in fee simple" or "tenant in fee," being possessed of the freehold or fee, generally, absolutely and simply, and he is so styled in contradistinction to persons who held estates of inheritance in tail, i. e. with a condition or qualification annexed. These limited fees are of two sorts; viz. Qualified or base fees, and fees conditional so called at common law; and afterwards *fees-tail*, in consequence of the statute of Westminster 2, usually called the statute *de donis*.

109.

Base fee.

A base or qualified fee is such a one as has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. As in the case of a grant to A and his heirs, *tenants of the manor of*
dale;

ELECTORS FOR COUNTIES.

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Dale; there when the heirs of A cease to be tenants of that manor, the grant is entirely defeated. This estate is a fee, because by possibility it may endure for ever; yet as that duration is uncertain, it is therefore a qualified or base fee.

A conditional fee at common law, was a fee Conditional fee. restrained to some particular heirs exclusive of others, "*donatio stricta et coarctata; sicut certis heredibus, quibusdam a successione exclusis*:" As to the heirs of a mans body, or to the heirs male of his body. It was called a conditional fee because on the donee's dying without such particular heirs, the land should revert to the donor.

Freeholds not of inheritance, and expressly created by deed or grant, are, where a lease is made of lands or tenements to a man, to hold to him for the term of his own life, or for that of another person, or for more lives than one: in any of which cases he is styled tenant for life; only when he holds the estate for the life of another he is called tenant *pur autre vie*. Freeholds not of inheritance.
2 Bl. Com. 120.
Tenancy for life.

Litt. f. 56.

In the Gloucestershire case, as to the vote of Henry Turner, it appeared that a man bequeathed his estates to his wife *until* his daughter came of age, *then* part of them to her own use. Turner married the widow, and the daughter not being of age, the committee 7 to 6 held this not to be such an estate as entitled Turner to vote. Gloster 190.

K 2

James

2 Lud. 432.

James Conquest voted at the Bedfordshire election under the following title. He married a widow, to whom and her former husband, the estate in question had been devised in joint tenancy with remainder to her in tail. Previous to marriage, a deed was made between him and the wife and a friend of hers R. V. in which the voter covenanted with R. V. not to intermeddle with the rents and profits of the estate, and that they should remain to the separate use of the wife, that R. V. should receive the rents for this purpose and have the sole management of the estate, subject to the wife's controul: That she might devise and otherwise dispose of it as she pleased and he would join in all necessary acts for rendering her disposal effectual. There was a receipt of rent by the wife produced in evidence by the tenant, who said he paid the rent to the wife. The committee held his vote bad.

Freeholds not of inheritance, and created by construction or operation of law, are of several kinds; of which description is,

Tenancy in tail
after possibility of
issue extinct.

2. Bl. Com. 124.

Litt. f. 32.

1. "A tenancy in tail after possibility of issue extinct": As, where a man has an estate to him and his heirs, on the body of his present wife to be begotten, and the wife dies without issue: in this case the man has an estate tail, which cannot possibly descend to any one.

2. "A

2. "A tenancy by the curtesy of England :"

As, where a man marries a woman seized of an estate of inheritance in fee simple or fee-tail, and has by her issue born alive, which was capable of inheriting her estate. In this case the husband, on the death of his wife, holds the lands for his life, as tenant by the curtesy of England.

Tenancy by the
by the curtesy of
England.

Litt. f. 35. 52.

3. "A tenancy in dower :"

As, where the husband of a woman is seized of an estate of inheritance and dies; in this case the wife (where she is not by some means barred, as by settlement made previous to marriage, by levying a fine, &c.) has the third part of all the lands and tenements whereof he was seized at any time during the coverture, to hold to herself for the term of her natural life.

Tenancy in dower.

Ibid. f. 36.

But it seems that the husbands of these tenants in dower, were, previous to the 20. Geo. III. c. 17. sometimes excluded from voting, where the dower was not set out by metes and bounds, but now that statute has given them the right. For by the 12th section it is enacted, "That where any woman, the widow of any person tenant in fee or in tail shall be entitled to dower or thirds by the common law, out of the freehold estate of which her husband *died seized or possessed of* *, and shall

Gloster 45.
20 G. III. c. 17.

Husbands of women entitled to dower out of the estates of their former husbands, may vote in respect thereof, although the said dower has not been set out by metes and bounds.

* Mr. Serjeant Heywood remarks, that these words do not take in such estates, as the first husband had been seized of, conveyed away, or otherwise disposed of in his life time, and therefore the right of persons, marrying widows entitled to dower, out of those estates of which the first husband did not die seized or possessed of, must remain as at common law.

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intermarry with a second husband, such second husband shall be entitled to vote in respect of such dower or thirds, if such dower or thirds, shall be of the clear yearly value of 40s. or upwards, although the same has not been assigned or set out by metes or bounds, if such second husband shall be in the actual receipts of the profits of such dower, and the estate from whence the same issues is rated to and contributes to the land-tax in the name of the actual owner of the lands or tenements, from whence such dower or thirds arises or issues."

Trustee and
cestui-que-trust;
mortgagor and
mortgagee.

7 & 8 W. III. c.
25.

By the 7 & 8. *Will. III. c. 25. s. 7.* "No person or persons shall be allowed to have any vote in election of members to serve in parliament for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate; but that the mortgagor, or cestui-que-trust, in possession shall and may vote for the same estate, notwithstanding such mortgage or trust."

Gloster. 129.

In the Gloucestershire case, Thomas Lawrence was objected to as having no freehold. The voter's father by his will gave his estate to trustees, to pay 6s. per week to John his eldest son, an idiot, and the remainder to the second son the voter, who was to be put in immediate possession by the trustees, on giving security to pay the 6s. per week. He had not given security

curity, nor had the trustees put him in possession. It was said in support of the vote, that though not entitled to have the premises assigned to him till he had given security, yet he had an interest of more than 40s. a year in them for his life. In answer it was said, that this would not prove him to be the owner of an house and land for which he had voted. The committee determined that the voter had no such an interest in the premises as entitled him to vote. But they afterwards determined, that John, the elder brother, had a right to vote in respect of the premises devised to the trustees. Gloster 131.

In the same case, the estate which Robert Jenner voted for, he had sold to one "Bedwell," who had permitted him to receive the rents and profits for life, and executed a bond for that purpose at the time of the sale. The committee resolved *nem. con.* that Jenner had no right to vote. Ibid 183.

It was objected to certain voters in the Downton case, that the conveyance of the burgages for which they voted gave them no right. The conveyances were made to them by the trustees under a will dated in 1779; whereby the testator devised his property in the borough of Downton to them and their heirs and assigns, in trust, as soon as conveniently might be after his decease, to convey the same to the use of his daughter Anne Shafto for life, with remainder to 1 Lud. 147.

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trustees to preserve contingent remainders; remainder to the use of Robert Shafto, second son of his daughter Anne in strict settlement, with other remainders over. Mrs. Shafto died in 1783, leaving Robert an infant. In 1784, the conveyances to the voters were made by the trustees for two lives paying a rack rent. It was argued both from the principles established in chancery, and from the above statute, that the *trustees* could convey no title to the voters. But the committee held the votes good.

2 Lud. 424.

As to the vote of James Smith in the Bedfordshire case, The committee held it good under the following circumstances. He had been in possession of his freehold 5 years. It was part of a larger estate devised in his father's will, to his elder brother Thomas in trust for payment of legacies to younger children. Thomas refused to hold the land subject to the trust, and the younger children took possession of certain parcels in satisfaction of their legacies, with the consent of the elder brother: The voter held one of the parcels.

Ibid. 440.

In the same case, John Bonfield's father devised an estate to his second son, subject to an annuity for life to the voter, who was the eldest son. The devisee by parol agreed to give up the estate in satisfaction of the annuity. The voter was in possession of and voted for this estate, and the committee held it a good vote.

In

In the Gloucestershire case, William Parry was objected to as having no freehold. He had articulated to sell his estate and put the purchaser into possession; but the money was not paid, nor the purchase completed. It was moved and carried 8 to 5, "That as far as appears to the committee William Parry has such an interest in the estate which he articulated to sell to Smith, and of which Smith was let into possession in November 1775, as to entitle him to vote."

Equitable purchasers.

Gloster 82.

John Hinton purchased a freehold in 1774, and was put into possession, but no conveyance was executed till 1776, (which was within 12 months of the election.) The committee resolved *nem. con.* that he had no right to vote.

Ibid. 153.

Yet where William Smith had been in possession of his freehold more than a year before the election, under a contract for the purchase of as long standing, but *all* the purchase money was not paid, nor was the conveyance executed by the seller till six months before the election: The committee in the Bedfordshire case held the vote good.

2 Lud. 540.

In the same case, John Jackson had agreed before the election to sell his freehold from Lady Day, 1784, which was 13 days before the election commenced; but refused to execute the deeds till after the election, having promised to vote. After the election he executed the conveyance, which bore date the 25th of March preceding,

Ibid. 427.

preceding, and an attornment of the same date. His vote was disallowed.

In what cases a
freehold title will
be presumed.

Gloster 183.

In the Gloucestershire case, to substantiate the vote of Richard Sharman, a deed had been produced of the premises (for which he voted) in the time of Queen Elizabeth for 1000 years. In 1700, one Bailey granted it in fee, from whom the title was deduced to the voter. And the committee resolved *nem. con.* "That Sharman had a right to vote." But where Paul Silvester voted under a deed which conveyed to him an estate for the remainder of 99 years, as if it was a freehold, the committee disallowed his vote.

Ibid. 182.

2. Lud. 423.

In the Bedfordshire case, Matthew Handscomb, had been in possession of the freehold for which he voted about 34 years; for the first ten years of which he paid rent for it: Since that time, the owner not having been heard of, no rent had been demanded of him or paid. His vote was deemed good.

Ibid 440.

Windmill.

And the following case of Joseph Marshall arose before the same committee. He voted for a *Windmill*, which stood in a common field, upon a plot of grass ground, large enough to clear the sway of the wings, inclosed within a fence put up by the voter. It was fixed on a post upon pattens, in a foundation of brick-work. Nothing was expressly proved to shew that this plot of ground belonged to the voter; or that it did

not

not. It was argued against the vote that this windmill was merely a chattel and no freehold. In answer it was said, from the evidence the voter must be presumed to have a right to the soil on which his mill stands, and that a windmill has never been considered as chattel in any case, therefore upon general principles, considered as a building fixed in the soil, it must be part of the freehold. And the committee held the vote good.

Whether tenants in ancient demesne have a right to vote at county elections is a question undecided, and about which learned men differ. Mr. Serjeant Heywood says there seems no doubt that the common tenants in ancient demesne, holding by copy of court roll, not at the will of the lord, but according to the custom of the manor, are included in the general description of copyholders, and therefore excluded by the 31. Geo. II. c. 14. which enacts, that, "no person who holds his estate by copy of court roll" shall be entitled to vote, as clearly as they are excepted out of the operation of the statute of 12. Car. II. c. 24. which turns all the feudal tenures into free and common socage, except only tenures in frankalmoigne, "*any tenure by copy of court roll,*" and the honorary services of grand serjeantry; for it is under this exception, as a tenure by copy of court roll, that the tenure in an-

Ancient demesne

2. Bl. Com. 100.

4. Inst. p. 5.

4. Com. Dig. p.

487.

Heyw. on Co.

El. 36.

ancient demesne escaped the general destruction, and is permitted to exist at this day.

Customary free-
holds.

Gloster 64.

The right of customary freeholders to vote at elections was discussed and decided by the Gloucestershire committee, as to the vote of James Boswood, who was tenant of lands within the manor of Dymock, which is ancient demesne. By the court rolls of the manor it appeared, that if the tenant lived in the manor of Dymock, he always took the oath of fealty; that the jury always presented the death of a tenant, with the services or heriots due. If those were unknown they presented him generally. That the Dymock jury was a court baron, and at Michaelmas was also a court leet. When a tenant wanted to alienate, a private court was called for that purpose, at which three customary tenants and two free benchers were present (the free benchers were certain freeholders in the parish of Dymock, not holding customary lands, two of whom sat as assessors in every court, but did not appear vested with any power, except as witnesses). That licence was always granted to two customary tenants to infeoff, and the seller paid a chief rent to the lord on alienation, viz. one year's rent, that the licence was enrolled, the lord of the manor or his steward had no other concern in the title, that the steward did sometimes call for the infeoffment to inspect it, but never enrolled it.

By

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By the custom of the manor it appeared that the estates descend to lineal heirs only, and failing such, to the lord of the manor's use. It was said in argument that the deed of infeoffment ought also to be enrolled, and that the steward can enforce the enrolment, if not done in a year, by calling for the deeds and holding the estate 'till they are enrolled. The committee resolved, "That John Boswood, a customary and ancient demesne tenant of the manor of Dymock according to the custom of the manor, had such a freehold therein as entitled him to vote, &c.

Persons are excluded from voting in respect of copyholds by the 31. *Geo. II. c. 14. s. 1.* which enacts, "That no person who holds his estate by copy of court roll shall be entitled thereby to vote at the election of any knight or knights of a shire, within that part of Great Britain called England, or principality of Wales; and if any person shall vote in any such election, contrary to the true intent and meaning hereof, every such vote shall be void to all intents and purposes whatsoever; and every person so voting shall forfeit to any candidate for whom such vote shall not have been given, and who shall first sue for the same, the sum of fifty pounds;" to be recovered in the manner therein mentioned.

Corporations are either *sole*, or *aggregate*. Corporations sole, consist of one person only and his successors. As the king is a sole corporation :

Copyholds.

31. G. II. c. 14.

Copyholders are disabled from voting for knights of the shire;

their vote void, and they to forfeit 50*l.*

Corporations.

1. Bl. Com. 469.

Sole.

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Heyw. on Co. El.
72.

tion : so is a bishop : so are some deans and prebendaries, distinct from their several chapters : and so is every parson and vicar. And Mr. serjeant Heywood observes it has never been disputed, that persons being sole corporations, have a right to vote at the elections of knights of the shire, for lands which they hold in their corporate capacity, i. e. to them *and their* successors, not to them *and their heirs*.

Aggregate.

Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever : of which kind are the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church. But the individual members of these corporations are not allowed to vote.

Gloster 136.

As in the case of Dr. Stone one of the twelve vicars of Hereford. It appeared that there were twelve vicars of Hereford with the custos who aggregately enjoyed 103l. *per annum*. The custos divides the rents as they come in, drawing a double share for himself. the rest draw an equal share each. It was resolved *nem. con.* by the Gloucestershire committee, " That Dr. Stone, being part of a corporate body, composed of a custos and eleven vicars of Hereford, had not a right to vote, &c. for his part of the estate vested in the said corporation."

So,

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So, as to the twelve burgesses of Malmesbury ; 2. Lud. 136.
who hold each a parcel of land in right of their
burgessships, (in some measure like the preben-
dal rights in chapter lands) they were objected to,
and it was argued that the lands belonged to the
corporation aggregate, and not to the individual
members of it. But the committee came to no
resolution.

In the Gloucestershire case the following mo-
tion passed in the negative, 8 to 5, viz. " That
Samuel Thomas, enjoying as dissenting minister
of the chapel of French Hay, an annuity of 15l.
a-year, by virtue of a deed of trust, to the sole use
and benefit of Thomas Tyler, so long as he shall
live, and supply the cure in the chapel of French
Hay; and after his death, or ceasing to serve the
cure, then in trust to apply the said annuity to-
wards finding and providing, another good learn-
ed and pious divine, of the presbyterian persua-
sion, to preach and supply the cure of French Hay,
so long as the said chapel shall be tolerated, had
a right to vote, &c."

Dissenting mini-
sters.

Gloster 176.

And another motion, " That Nathaniel Phil-
lips, as minister of the congregation of Tewkes-
bury, being in possession of an house, left by the
will of Mary Workman to the minister for the
time being of the congregation of dissenters in
Tewkesbury, the rent the roof to be taken by
them from time to time, had thereby a right to
vote," was also negatived 8 to 5.

Ibid 193.

So,

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2. Lud. 432.

So, in the Bedfordshire case, William Dickinson voted for house and land at Keysoe. He was minister of a dissenting congregation there, and had held the place upwards of twenty years: in right of which, besides voluntary contributions, he enjoyed two houses and an orchard, one of which houses was let for 2l. 14s. a-year. For these he was regularly assessed to the land-tax. It appeared in evidence that some land was purchased by persons, who acted as trustees for the congregation in 1741, to build a meeting-house for public worship, and a house for the minister. There was no instance of any one of the ministers having been removed after the appointment; but more than one had been rejected, after more than a year's service in the meeting in a state of trial. Two members of the congregation who were examined, said they did not understand that the congregation had a power to remove the minister. The vote was held bad.

Schoolmasters.

2. Lud. 501.

In the Bedfordshire case, Thomas Gardener and Peter Mason voted each for land and tythe in the occupation of Edward Rudd. The former was schoolmaster of the free school of Biggleswade, the latter of Holme, instituted by the will of Sir John Cotton in 1726; under these appointments they received annual salaries out of an estate settled by the will for these uses. The appointment was in the lord of the manor of Stratton, who thought that he had no power by the

the institution to remove the masters he had appointed. These votes were held good.

In the same case, Philip Turner voted for a rent charge on the estate of the Rev. Mr. Hawkins. He was appointed schoolmaster at Ampt-hill by Mr. Hawkins the rector under a deed made in 1740, whereby an estate was settled on the rector for the time being, on condition that he should "apply out of the rents 5*l.* a year to one or more schoolmasters or schoolmistresses," for educating sixteen children. It was proved by the rector, that he did not know that he was empowered to turn out the schoolmaster, and knew of no instance in which any one had been displaced. His vote was deemed good. 2. Lud. 431.

But the two following were considered bad, Ibid 4:8.
James Taylor voted for a rent charge. He was schoolmaster of Sharpenhoe, and under that appointment received 10*l.* a year for teaching eight poor boys under a will made in 1686, whereby the rent charge was devised for the purpose. The operative words of it were these, viz. "The schoolmaster and children from time to time to be put in and placed there by the approbation and good liking of J. N. and his heirs." Two recent instances in which the masters of this school had been removed, without any cause assigned, and which they had submitted to, were urged in support of the objection to the voter, as a proof that the appointment was understood

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to be held during pleasure, and therefore no freehold. The voter was also objected to as not being assessed,

2. L. d. 429.

William Irons also voted for a rent charge. His freehold was in his appointment to be school-master of the free school at Houghton Conquest under Sidney college Cambridge, in right of which he received an annual salary out of lands charged with the payment of it. The appointment recited, "That no person qualified, according to the will of the founder, had offered himself for the place; and that therefore the master and fellows at the request of the rector and inhabitants of the parish, did appoint William Irons to supply the place, till a person properly qualified shall offer."

II. Of the value of the estate; how ascertained, and reduced.

10. Ac. 23.

No person to vote for a knight of the shire, in right of lands which have not been charged to public taxes, &c. and for which such person has not received the rents for one year before unless such lands came to him by descent, &c.

With respect to the value of the estate giving the right to vote, and the manner of ascertaining such value, the 10. Ann. c. 23. s. 2. enacts, "That no person shall vote for the electing of any knight of a shire within that part of Great Britain called England, in respect or in right of any lands or tenements which have not been charged or assessed to the public taxes, church rates and parish duties, in such proportion as other lands or tenements of forty-shillings per an-

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nam, within the same parish or township, where the same shall lie or be, are usually charged, and for which such person shall not have received the rents or profits, or be entitled to have received the same, to the full value of forty shillings or more, to his own use for one year before such election, unless such lands or tenements, came to such person within the time aforesaid by descent, marriage, marriage-settlement, devise or presentation to some benefice in the church, or by promotion to some office, unto which such freehold is affixed." Any person voting, contrary to that act, forfeits forty pounds.

Penalty 40l.

And the 12. *Ann. st. 1. c. 5.* made to explain and amend the 10th of Ann, recited, "Whereas some doubts have arisen whether parsons, vicars, and other persons, having messuages, lands, rents, tithes, or other hereditaments, are not thereby restrained from voting at such elections, in regard that such messuages, lands, rents, tithes, or hereditaments, have not been usually charged or assessed to the public taxes, church rates, and parish duties, and to every of them. Now, for as much as it was only intended thereby to ascertain the value of lands or tenements, by making the proportion paid to the public taxes, church-rates, and parish duties, or such of them to which the same were usually charged or assessed, the measure of the value thereof; and for removing such doubts," and then enacts, "That the said act, or any

12. A. st. 1. c. 5.

The 10. Ann. c. 23. not to restrain any person from voting in respect of any rent, &c. or chambers in inns of court, in regard of their not being charged to public taxes, &c.

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thing therein contained shall not extend, or be construed to restrain any person from voting in such election of any knight of a shire within that part of Great Britain called England, in respect or in right of any rents, tithes, or other incorporeal inheritances, or any messuages or lands in extra-parochial places, or any chambers in the inns of court, or inns of chancery, or any messuages or seats belonging to any offices, in regard or by reason that the same have not usually been, or shall not be charged or assessed to all or any the public taxes, church rates, and parish duties, as mentioned in the above recited act, or in respect or in right of any other messuages or lands not herein before specified, in regard or by reason that the same have not been usually charged or assessed to all and every the public taxes, church rates, and parish duties aforesaid. Provided, That such messuages or lands have usually been charged or assessed to some one or more of the said public taxes, rates, or duties, in such proportion as other messuages or lands of forty shillings *per annum* within the same parish or township where the same shall lie or be, are usually charged to the same; any thing contained in the said recited act to the contrary thereof in any wise notwithstanding."

Provided that they have been assessed as other messuages of 40s. per ann. in the same parish, &c.

But the regulations in these acts of 10th and 12th of Ann, having occasioned infinite disputes at contested elections, and extending only to the counties

counties of England, the 18. *Geo. II. c. 18. s. 2.* after reciting those two acts, enacts, "That so much of the said recited act, [12. *Ann. st. 1. c. 5.*] as disables any person to vote for knights of shires in respect or in right of any lands or tenements which have not been charged or assessed as therein mentioned, shall be and is hereby repealed." And afterwards by the fifth section, further enacts, "That no person shall vote in any such election without having a freehold estate in the county for which he votes, *of the clear yearly value of forty shillings over and above all rents and charges payable out of or in respect of the same.*" Under the penalty of 40l. But the sixth section declares, "That no public or parliamentary tax, county, church or parish rate, or duty, or any other tax, rate, or assessment whatsoever to be assessed or levied upon any county, division, rape, lathe, wapentake, ward, or hundred, is or shall be deemed or construed to be any charge payable out of or in respect of any freehold estate, within the meaning and intention of this act, or of the oath or solemn affirmation herein before directed to be administered to, and taken by every freeholder if required as aforesaid."

The 12. A. st. 1. c. 5. in part repealed by the 18. G. II. c. 18.

And county voters to have a freehold of 40s clear of all rents and charges.

But no public tax to be deemed a charge on a freehold.

"*Of the clear yearly value of 40s.*"—The rule adopted by the Bedfordshire committee in ascertaining the value of an estate, where the owner was in possession, was this, "That the value of a freehold in right of which the owner votes is

Ascertaining the value.

2. Lud. 450.

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2. Lu 1. 470.

the rent which a tenant would give for it; and not what the owner occupying it himself, may possibly acquire from it." And the method pursued in establishing the value which would be given by a tenant, was by examining persons of the neighbourhood, farmers or others who were acquainted with the lands; and by enquiring into the amount and proportion of the public and parish taxes with which they were charged. But where the lands were let, the rent was in general considered only as one mode of estimating the value, but not sufficient to exclude other means of information.

Ibid 448.

John Blackwell received 50s. a-year for his freehold; and the tenant had receipts given him for 30s. only, in order to be taxed in that proportion and to deceive the assessors. His vote was held good.

Value how reduced.

By dower.
2. Lud. 450.

Many cases happened before the Bedfordshire committee, in which a widow's dower was contended to be a diminution of value. Where it appeared the widow had not received or claimed dower for a considerable length of time, according to the circumstances of the case, the committee considered that, as presumptive evidence of a release.

By mortgage.
Ibid.

"Of the clear yearly value of 40s. over and above all rents and charges payable out of, or in respect of the same." The question as to the reduction of the value by a mortgage was fully discussed

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cussed in the Bedfordshire case, as to the vote of Richard Stringer, who was objected to as having a freehold of 9l. value charged with a mortgage for 220l. the interest of which sum reduced the annual value of the estate under 40s. After the arguments of counsel on both sides, the committee resolved, " That the interest upon a mortgage, the mortgagor still being in possession, is such a charge upon the estate within the meaning of the statutes, as to affect the rights of the voter." And likewise, " That the counsel be permitted to call evidence to shew that the interest upon a mortgage reduces the clear yearly value of an estate below 40s. And the committee afterwards resolved, " That the interest of a mortgage (which is charged upon the estate in right of which a voter voted) being established by evidence, so as to reduce the value of the estate to less than 40s. *per annum* does invalidate the vote; and that such evidence is conclusive, notwithstanding any other property possessed by the voter." The committee held the vote good upon the evidence of the intrinsic value of his estate.

But in the Cricklade committee, the objection of a mortgage, and that of an estate subject by will to the payment of debts and legacies, reducing the value in the same manner, were argued upon at the same time, and received both together the judgment of the court, viz. " That the mortgager *in possession* of lands of the value of

2. Lud. 470.

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40s. a-year; and the devisee in possession of lands of the value of 40s. a-year, devised subject to the payment of debts and legacies, are entitled to vote."

2. Lud. 471.

In the case of Buckinghamshire, the question was argued, under the same circumstances as those of Richard Stringer. And the committee there resolved, as in the Bedfordshire case, "That a mortgage is such a charge on land, as may reduce the value of the freehold, below what may intitle a person to give his vote for a knight of the shire."

By a devise subject to debts, &c.
Ibid. 470. & n.
F. 581.

From the Criklade case above mentioned, it appears that a devisee in possession of lands of the value of 40s. a-year devised subject to the payment of debts and legacies, is intitled to vote.

By taxes.

2. Lud. 472.

"No public or parliamentary tax, &c. shall be deemed to be any charge, &c. within the meaning of this act, &c." A voter occupied his own freehold, which without adding to the annual value, the amount of the taxes charged upon it, was worth less than 40s. but with the taxes more. He was objected to, and while the counsel were arguing the question, they were asked by the committee, if they put the poor rates upon the same footing with the public revenue taxes; it was answered, that both were considered to be the same in this respect. The committee *negatived* the following motion, "That the parochial taxes, when paid by the tenant, constitute a part of the rent paid by him for the land, and are to be considered as part of the income, in right of which

which the owner votes." But on this question being resumed in a future state of the cause, the following motion passed in the *affirmative*, "That the land tax when paid by the tenant, constitute &c." (in the words of the former motion)—A similar motion respecting the window and house taxes, passed in the *negative*.

2. Lul. 476.

Land tax.

Window and
house taxes.

John Southwell married one of six daughters entitled to equal moieties of an estate let for eight guineas a-year clear rent, he paying for the land tax 1l. 4s. and laying out in repairs 3l. So that including the two last mentioned sums, the sixth part amounted to 2l. 2s. His vote was held good.

Ibid. 447.

III. Of fraudulent and occasional votes.

To prevent fraudulent and occasional votes, the 7 & 8. Will. III. c. 25. s. 7. enacts, "That all conveyances of any messuages, lands, tenements or hereditaments in any county, city, borough, town corporate, port, or place, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons, to enable them to vote at elections of members to serve in parliament, are hereby declared to be void and of none effect, and that no more than one single voice shall be admitted to one and the same house or tenement."*

Splitting free-
holds.7. & 8. W. III.
c. 25.Conveyances in
order to multiply
voices void.But one voice for
one house.

* This was held, in the Downton cases, not to affect burgage tenements.

Under

2. Doug. 326.

Under this clause it was contended in the case of Haslemere, that all freeholds of which an unity of possession could be proved till 1696, when the statute passed, but which had since been divided, were to be considered as split within this act, and therefore incapable of carrying legal votes. It does not appear that the committee came to any resolution on the subject.

Fraudulent conveyances.

10. A. c. 23.
All conveyances fraudulently made to qualify any person to vote (subject to conditions to defeat the same) shall be discharged of such conditions, &c.

And all bonds, &c. for defeating such estate shall be void.

The statute of William being found ineffectual, to remedy the "scandalous and fraudulent practices" used to create and multiply votes, it was enacted by the 10. *Ann. c. 23. s. 1.* "That all estates and conveyances whatsoever, made to any person, or persons, in any fraudulent or collusive manner, on purpose to qualify him or them to give his or their vote or votes at such elections of knights of the shire (subject nevertheless to conditions or agreements to defeat or determine such estate, or to reconvey the same) shall be deemed and taken against those persons who executed the same, as free and absolute, and be holden and enjoyed by all and every such person or persons to whom such conveyance shall be made, as aforesaid, freely and absolutely acquitted, exonerated, and discharged of and from all manner of trusts, conditions, clauses of re-entry, powers of revocation, provisoes of redemption, or other defeazances whatsoever, between or with the said parties, or any other person or persons in trust for them; and that all bonds, covenants, collateral or other securities

securities, contracts, or agreements, between or with the said parties, or any other person or persons in trust for them, or any of them, for the redeeming, revoking, or defeating such estate or estates, or for the restoring or re-conveying thereof, or any part thereof, to any person or persons who made or executed such conveyance, or to any other person or persons in trust for them, or any of them, shall be null and void to all intents and purposes whatsoever; and that every person who shall make and execute such conveyance or conveyances as aforesaid, or being privy to such purpose, shall devise or prepare the same; and every person, who, by colour thereof, shall give any vote at any election of any knight or knights of a shire, to serve in parliament, shall, for every such conveyance so made, or vote so created or given, forfeit the sum of forty pounds."

Persons making, &c. such conveyances, or voting by colour thereof, shall, for every such offence forfeit 40*l*.

Further regulations being still necessary for preventing fraudulent votes, the 18 *Geo. II. c.* 18. *s.* 5. enacts, "That no person shall vote in any such [county] election, without having a freehold estate in the county for which he votes of the clear yearly value of 40*s.* over and above all rents and charges payable out of or in respect of the same, or without having been in the actual possession, or in receipt of the rents and profits thereof for his own use above twelve calendar

Not being in possession 12 months.

18 *G. II. c.* 18.

No person to vote without having been 12 months in possession, unless the same came to him by descent, &c.

Penalty 40l.

calendar months*, unless the same came to him within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to an office, or shall vote in respect or in right of any freehold estate which was made or granted to him fraudulently, on purpose to qualify him to give his vote, or shall vote more than once at the same election.”—Any person voting contrary to that act, forfeits to any candidate to whom his vote is not given, and who first sues for the same forty pounds.

2 Lud 540.

“ *Without having been in the actual possession, or in the receipt of the rents and profits thereof for his own use above twelve calendar months.*”—The following case arose on this part of the act, before the Bedfordshire committee. J. Freshwater’s vote was objected to, under these circumstances. He purchased his freehold on the 26th of April 1783, having then for the first time bargained for it. The conveyance was not executed till the beginning of May following. He enjoyed it from Lady Day preceding; the seller paying no taxes, nor deriving profit from it after

* There is an inaccuracy here, which is mentioned by Mr. Douglas in his notes on the Cardigan case, in not stating from what period the twelve months are to be computed; whether from the day the voter polls; or from the day the election commenced? Yet Mr. Douglas observes the most obvious construction is, that the computation is to be from the day when the voter takes the oath, and gives his vote. 3 Doug. 234.

that

that day. The election began April 7, 1784, and the return was made on the 19th following. Upon this proof the vote was admitted to be bad.

"Unless the same came to him within the time aforesaid, by descent, marriage, marriage settlement, devise, &c."—It was said by the counsel in the course of their argument in the Bristol case, that at the then last election for the county of Monmouth, a person who had voted, having died pending the poll, his son voted for his land and his vote was holden to be good. So where one Robert Saunders voted in right of his wife's freehold, whom he married after the election began, and before he voted, the committee held his vote good.

¹ Doug. 272.

² Lud. 427.

A voter must not only be in the possession of his freehold twelve calendar months previous to the election, as directed by the foregoing statute, unless the same came to him within that time in the manner therein mentioned; but he must also be rated to the land-tax for the same six kalendar months, agreeably to the following statutes:

Not being affected to the land tax.

18 Geo. II. c. 18. s. 3. "No person shall vote for the electing a knight or knights of the shire to serve in parliament, within that part of Great Britain called England, or the principality of Wales, in respect or in right of any messuages, lands or tenements which have not been charged

18. G. II. c. 18.

Freeholder's estates to be assessed to the land tax.

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charged or assessed towards some aid granted, or hereafter to be granted to his majesty his heirs or successors, by a land-tax in Great Britain, twelve [reduced to *six*, by the 20. *Geo. III. c. 17.* next mentioned] kalendar months next before such election."

Exception for
voting in right of
chambers or of-
fices.

4. "That this act or any thing herein contained, shall not extend or be construed to restrain any person from voting in any such election of any knight or knights of a shire within that part of Great Britain called England, or the principality of Wales in respect or in right of any rents or any chambers in the inns of court, or inns of Chancery, or any messuages or seats belonging to any offices, in regard or by reason that the same have not been usually charged or assessed to the aid commonly called the land-tax; and that the acting commissioners of the land-tax for the time being, or any three or more of them, at their meetings for the respective divisions shall sign and seal one other duplicate of the copies of the respective assessments, to be delivered to them by the several assessors after all appeals determined, and the same to deliver or cause to be delivered, to the clerks of the peace for their respective counties to be by them kept amongst the records of the sessions, to which all persons may resort at all seasonable times and inspect the same, paying sixpence for such inspection, and the said clerks of the peace or their deputies, are hereby

Duplicates of the
land tax assess-
ments to be kept
among the re-
cords of the ses-
sions.

ELECTORS FOR COUNTIES.

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hereby required forthwith to give copies of the said duplicates or any part thereof to any such person or persons who shall require the same, paying after the rate of sixpence for every three hundred words, and so in proportion for any greater or lesser number."

To be inspected
or copies taken.

The 20 *Geo. III. c. 17.* recites, "Whereas the several laws now in being for ascertaining the rights of persons claiming to vote in the elections of knights of the shire to serve in parliament, for that part of Great Britain called England, are difficult to be carried into execution, and great delays and inconveniencies have been occasioned by the numberless disputes which have arisen at county elections concerning such rights:" For remedy whereof, it enacts, "That, no person shall vote for the electing of any knight or knights of the shire to serve in parliament, within that part of Great Britain called England, or the principality of Wales, in respect of any messuages, lands, or tenements, which have not, for six kalendar months next before such election, being charged or assessed towards some aid granted or to be granted to his majesty, his heirs or successors, by a land tax, (in case any such aid be then granted and assessable,) in the name of the person or persons who shall claim to vote at such election for or in respect of any such messuages, lands, or tenements, or in the name of his or their tenant or tenants, ac-
tually

20 G. III. c. 17.

After Jan. 1,
1781, no person
to vote at any
county election
in England, or
Wales, who has
not been assessed
to the land tax
for his qualifica-
tion, 6 months
previous to the
time of election.

tually occupying the same as tenant or tenants of the owner or landlord thereof."

Certain cases to which this act shall not extend.

2. " That this act, with respect to such rating and assessing as aforesaid, shall not extend, or be construed to extend, to annuities or fee-farm rents (duly registered) issuing out of any messuages, lands, or tenements, rated or assessed as aforesaid: nor shall the same extend, or be construed to extend, to any person who became entitled to such messuages, lands, or tenements, for which he shall vote, or claim to vote as aforesaid, by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to an office, within twelve kalendar months next before such election; but such person shall be entitled to vote at such election, if the messuages, lands, or tenements, for which he shall vote, or claim to vote, as aforesaid, have been, within two years next before such election, rated or assessed to the land tax, in the name of the person or persons by or through whom such person voting, or claiming to vote, as aforesaid, shall derive his title to the messuages, lands, or tenements, for which he shall vote, or claim to vote, as aforesaid, or in the name of some predecessor, within two years next before such election, of such person claiming to vote in respect of any promotion to any benefice in a church, or promotion to an office, or in the name of the tenant

Provided the claimant's qualification has been assessed to the land tax, in the name of his predecessor, within two years before the election.

or tenants of such person or persons, such tenant or tenants actually occupying such messuages, lands, or tenements."

3. "That the commissioners of the land tax for that part of Great Britain called England, or the principality of Wales, at their respective meetings held for appointing assessors of the land tax for the several parishes and places lying within the division for which such commissioners shall act, shall cause to be delivered to each of the said assessors, a printed form of an assessment, as set forth in the schedule hereunto annexed; and the said assessors are hereby required to make their assessments according to the said form; and shall make three duplicates of such assessments; and shall (at least fourteen days before such assessments shall be delivered to the commissioners of the land tax for the county, riding, or division, within which the parish or place for which such assessment shall be made shall lie) cause one of the said duplicates, or a fair copy thereof, to be stuck up upon one of the doors of the church or chapel of the parish or place for which such assessment shall be made; but in case such assessment shall be made for an extra-parochial or any other place, where there is not any church or chapel, then such assessment shall be stuck up upon one of the doors of the church or chapel in a parish next adjoining; and if any person or persons (renting, hold-

Commissioners of the land tax to deliver to assessors a printed form of an assessment, who are to make their assessments according thereto.

A duplicate of assessments to be stuck up on the door of the parish church, &c.

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ing, or occupying, any messuages, lands, or tenements, in any such parish or place) shall rent, hold, or occupy messuages, lands, or tenements, belonging to different owners or proprietors, the same shall be separately and distinctly rated and assessed in such assessments, that the proportion of the land tax to be paid by each separate owner or proprietor respectively may be known and ascertained; and the said duplicates shall be delivered to the land tax commissioners, at their meeting for the receipt of assessments; and if the name of any owner or owners of any messuages, lands, or tenements, in such parish or place, entitled to vote as aforesaid, shall not appear or be included in such assessment, it shall and may be lawful for such person or persons, by himself or themselves, or by his or their agent or agents, to appeal to the commissioners of the land tax, to whom such assessments shall be returned; and every person so intending to appeal shall, and is hereby required to give notice thereof in writing to one or more of the assessors of the parish or place wherein he is rated; and the said commissioners, on sufficient cause to be shewn, shall amend the duplicates of such assessments, by inserting therein the name or names of the actual occupier or occupiers, and of the owner or owners of such messuages, lands, or tenements, or the person or persons entitled to, or in the actual receipt of the rents, issues and profits thereof, or by erasing the

Qualified persons, whose names are omitted in assessments, may appeal to the commissioners;

who are to amend the assessments where defective.

the name of any person who shall appear to them to have been improperly inserted therein; and the said commissioners are hereby required to cause one of the said duplicates so amended (after the same shall be duly signed and sealed by the said commissioners, or any three of them) to be returned to the said assessors, or one of them; and such assessors are hereby required to deliver such duplicate, so amended, within ten days after the receipt thereof, to one of the chief constables of the hundred, lathe, or wapentake, within which the parish or place for which such assessment was made shall lie, taking the receipt of such chief constable for the same, and which receipt such chief constable is hereby required to give; and such chief constable is hereby also required to deliver such duplicate upon oath (which oath the said magistrates are hereby empowered to administer) without any alteration, at the next general quarter sessions of the peace for the county, riding, or division, within which such assessment shall be made, in open court, the first day of such sessions, to the clerk of the peace attending such sessions, to be by him filed and kept amongst the records of the sessions."

4. "That if any assessor shall neglect to deliver such duplicate so amended, to such chief constable as aforesaid, or if such chief constable, to whom the same shall be delivered, shall neglect to deliver the same to such clerk of the peace, at the next general quarter

An amended duplicate to be returned to the assessors, and delivered to the clerk of the peace at the next quarter sessions.

Penalty on assessor, &c. who shall alter or neglect to deliver any duplicate as above directed.

If clerk of the peace shall not receive all the duplicates before the end of Michaelmas sessions yearly, the court shall immediately fine the chief constables making default.

sessions of the peace as aforesaid, or shall wilfully alter or deface any such duplicate; every such assessor and chief constable so offending shall, for every such offence, and for every such duplicate so neglected to be delivered as aforesaid, forfeit the sum of five pounds, to be levied and recovered in the manner herein after mentioned."

5. "That at the Michaelmas sessions in every year, the clerk of the peace, or his deputy, attending such sessions, in every county, riding, or division, as aforesaid, shall, before the conclusion of such sessions, examine whether the duplicates of all the assessments within such county, riding, or division, shall have been delivered for that year; and if it shall appear that any such duplicates have not been received by or delivered to such clerk of the peace, or his deputy, by the proper chief constables, then and in such case such clerk of the peace, or his deputy, shall report the same to the court, and the court shall immediately set and impose the said fine or fines of five pounds upon such chief constables, for the hundred, lathe, or wapentake, within which the parish or place for which such duplicates or duplicates, of the assessment or assessments not returned shall lie; and the said clerk of the peace, or his deputy, shall give to such chief constables immediate notice of such fine or fines; and if the same is or are not immediately paid, the justices assembled in the said quarter

sessions shall

sessions shall, by order of court, issue a warrant of distress for the recovery thereof, directed to the constable or constables of the respective parishes or places where such chief constables shall live; and such warrant shall be delivered or transmitted by the clerk of the peace, or his deputy, to such constables, or one of them, who is and are hereby required to levy such fine or fines, by distress and sale of the goods and chattels of such chief constables, rendering the overplus (if any) to the owners of such goods and chattels, after deducting the reasonable charges of such distresses."

On failure of payment, fines may be levied by distress.

6. "That if such constables shall voluntarily make oath at such sessions, that such duplicate or duplicates was or were not delivered to them, or either of them, by such assessor or assessors, then, and in such case, the said fine or fines, herein-before directed, shall be set and imposed upon such assessor or assessors, of the parish or place, parishes or places, for which such duplicate or duplicates shall not be returned; and the justices assembled in such quarter sessions shall, by order of court, issue a warrant of distress for the recovery thereof, directed to the constable or constables of such parish or place, or respective parishes or places, or to such other person or persons as such justices shall think proper; and also shall, by order of court, require the chief constables, or one of them, to give

In case chief constables make oath that assessors neglected to deliver said duplicates to them

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notice to such assessor or assessors, that such fines have been set and imposed; and such chief constables are hereby required to serve such notices upon such assessors within fourteen days next after such sessions; and if such assessors, or one of them, shall not deliver such duplicate, or the chief constables' receipt for the same, to the clerk of the peace, or his deputy, for such county, riding, or division, within ten days after being served with such notice, then and in such case the said clerk of the peace, or his deputy, shall deliver or transmit such warrant of distress against the assessor, to the person or persons to whom the same shall be directed, who is hereby required to levy the said fine set upon such assessor by distress and sale of the goods and chattels of such assessor or assessors, rendering the overplus (if any) to the owner or owners, after deducting the reasonable charges of such distress."

then the fines shall be levied on the said assessors, except they deliver the duplicates, &c. within 10 days after notice.

But if assessors, within the said time, shall produce to the clerk of the peace the chief constables' receipt, then the fine shall be levied on said constables.

7. "That if such assessors, or either of them, shall, within the said ten days after such notice, produce to the said clerk of the peace, or his deputy, the receipt of such chief constables, or one of them, for such duplicate, then and in such case such clerk of the peace, or his deputy, shall deliver or transmit the warrants against such chief constables, or such of them who shall have signed such receipt, to the proper constable or constables to whom the same shall be directed, that the same may be executed as afore-

said

said, and the warrant or warrants for levying the fine or fines upon such assessor or assessors shall not be executed."

8. "That the fines to be set and imposed upon such chief constables and assessors as aforesaid, shall, after the same shall be so levied and recovered, be, by the person or persons who shall levy and recover the same, paid to the treasurer of the county, riding, or division, wherein the same shall be levied or recovered, or the lawful deputy of such treasurer, to be applied and disposed of as part of the county stock, under the direction of the sessions of such county, riding, or division."

Fines to be paid to the treasurer of the county, &c.

9. "That whenever any assessment shall not have been made by the assessor or assessors of any parish or place, and returned to the chief constable, and by the chief constable to the clerk of the peace, by the neglect or default of any person concerned therein, it shall and may be lawful for the said justices at the said quarter sessions, or any two justices for such county, riding, or division, out of sessions, to order and direct such assessment or assessments forthwith to be made and returned in manner aforesaid; and such assessments, so made and returned, shall have the same and the like effect as if made and returned at the time and in the manner hereinbefore directed."

When assessments are not made, and returned to the clerk of the peace, justices may order them to be made and returned forthwith.

M 4

10. "That

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Persons aggrieved may appeal to the quarter sessions;

giving ten days notice.

Justices may award costs.

10. "That if any person or persons shall be dissatisfied, or shall think himself or themselves aggrieved by any determination of the said commissioners of the land tax, it shall and may be lawful for such person or persons to appeal against such determination to the general quarter sessions of the peace for the county, riding, or division, within which such commissioners shall act, which shall happen next after the cause of complaint shall have arisen, giving ten days notice of such appeal to one of the commissioners signing the duplicate of the said assessment, and also to one of the assessors of the parish or place where the estate, belonging to the person or persons who shall think himself or themselves aggrieved, shall lie; and the justices assembled in such sessions are hereby authorized and required, by examination upon oath (which oath the said justices are hereby authorized to administer), to hear and determine the matter of such appeal, and to amend such assessments where they shall think necessary; and also to award such costs as to them in their discretion shall seem reasonable; and by their order or warrant to levy the costs which shall be so awarded, by distress and sale of the goods and chattels of the person or persons against whom the same shall be so awarded, rendering the overplus (if any) to the owner or owners, after deducting the reasonable charges of such distress."

11. "That

11. " That if the said commissioners, upon any appeal before them, and also the said justices in sessions upon any appeal before them, shall find it requisite to insert in such assessments, or the duplicates thereof, the names of any person or persons, which shall appear to such commissioners, or to such justices, to have been improperly omitted, such person or persons shall be taken and deemed to be rated in such assessment or assessments, as effectually, to all intents and purposes, as if the name or names of such person or persons had been originally inserted in such assessment by the assessors."

Any person whose name, on appeal, shall appear to have been improperly left out of any assessment, shall be deemed to have been rated therein.

13. " That it shall and may be lawful for all and every person or persons, at all seasonable times, to resort to and inspect the said duplicates, or any part thereof, in the hands of such clerk of the peace, or his deputy, paying for every search into, or inspection of, such duplicates, or any part thereof, one shilling, and no more; and the said clerk of the peace, or his deputy, is hereby required and directed, upon demand, to deliver a true copy or copies of all such duplicates, or of such part or parts of them, or any of them, of which a copy shall be demanded, to any person or persons who shall demand or desire the same, (such copy or copies to be signed by such clerk of the peace, or his deputy, purporting the same to be a true copy or true copies,) and for which copy or copies such clerk of the peace, or his deputy

Duplicates may be inspected.

Clerk of the peace to deliver signed copies of duplicates, on demand,

and being paid
6d. for every
300 words.

deputy, shall be paid at and after the rate of sixpence, and no more, for every three hundred words or figures, and so in proportion for any lesser number of words or figures; which said duplicates, and also a true copy of them, or any of them, or any part of them, signed as aforesaid, and also the duplicate of any assessment in the possession of the commissioners of the land tax, or in the possession of the receiver-general of the county, or a copy of the said duplicates, signed by such commissioners, and purporting the same to be a true copy, shall, at all times and in all places, be allowed and admitted as legal evidence of such assessments, certificates, memorials, and books of entries, in all cases whatsoever; and such copy shall be delivered in a reasonable time after the same shall be demanded."

Duplicates, &c.
to be deemed legal evidence.

Clerk of the peace, or his deputy, to attend at every election of a knight of the shire, with original duplicates, at the request of any candidate.

14. " That such clerk of the peace of every county, riding, or division, in whose office such duplicates shall be filed as aforesaid, or his deputy, shall, upon reasonable notice, attend at every election of a knight or knights of the shire for such county, with the said original duplicates, at the request of any candidate, or the agent or agents of any candidates; the person or persons requesting the same making such clerk of the peace, or his deputy, a satisfaction for such attendance, at and after the rate of two guineas for each day of his attendance at such election, together

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gether with an allowance of one shilling and sixpence a mile for the costs and charges he may be at, or put unto, in his journey from the place of his abode to and from the place of such election."

Such candidate to pay him 2l. 2s. for each day's attendance, and 1s. 6d. per mile for travelling charges.

15. "That after issuing any writ or precept for the election of a knight or knights of the shire for any county within that part of Great Britain called England, or the dominion of Wales, the clerk of the peace, or his deputy, shall, and he is hereby required to attend, *gratis*, from day to day, from the hour of nine in the forenoon to three in the afternoon, in each day, at the place where the records of such county, riding, or division, are usually kept, from the time of the delivery of such notice to the day immediately preceding the day of election of such knight or knights, for the purpose of receiving applications for the inspection of such duplicates, and for making copies of them, or any of them, or of so much of them, or any of them, which he shall be requested to copy as aforesaid."

After issuing any writ for election of a county member, the clerk of the peace shall attend *gratis*, from 9 to 3 each day, where the records of the county are usually kept, to make copies of duplicates, &c.

16. If the clerk of the peace, or his deputy, refuses to permit the duplicates, to be inspected, or to deliver copies of them within the time before mentioned, or neglects to attend at the place where the records are kept, or at any county election, with the duplicates; he forfeits five hundred pounds to the party aggrieved, provided such action is brought within two months;

Penalty on clerk of the peace or his deputy, making default.

Action to be brought within two months, &c.

Final judgement upon any verdict against a clerk of the peace, shall be deemed sufficient conviction.

Penalties how to be recovered.

Limitation of prosecutions.

months; and if no such action shall be brought within the time, then, to any person who shall sue for the same in the manner therein mentioned; and also forfeits his office; and is rendered incapable of being again appointed.

17. Final judgment to be deemed a sufficient conviction; and afterwards, the office is to be absolutely void.

18. The forfeitures or penalties imposed against the clerk of the peace, or deputy, by this act, may be recovered, with full costs of suit, by action of debt, &c.

19. No person to be liable to any forfeiture or penalty by this act, unless prosecution is commenced within twelve calendar months.

" FORM

" FORM OF ASSESSMENT.

County of N. is viz:
For the parish of
in the said county.

An assessment made in pursu-
ance of an act of parliament,
passed in the
year of his majesty's reign,
for granting an aid to his
majesty by a land tax, to be
raised in Great Britain, for
the service of the year 17

Form of assess-
ment.

Names of Proprietors.	Names of Occupiers.	Sums assessed.
A. B. —	Himself. —	— —
A. B. —	C. D. —	— —
E. F. —	C. D. —	— —
C. D. —	G. H. —	— —
I. K. } —	N. O. —	— —
and } —		
L. M. } —		
P. Q. —	{ R. S. and T. U. } —	— —

Signed this day of

17 by us

A. B. }
C. D. } Assessors."

With respect to complying with the form of 2. Lud. 496.
the above assessment, the committee in the Bed-
fordshire case in 1785, came to the two follow-
ing resolutions:

1st. "That it is not necessary that the form
of

of the assessment should be strictly complied with."

2d. "That the *owner's* name must appear on the assessment, either as the person assessed, or as owner of the land for which the tenant is assessed."

2 Lud. 536.

The committee in the Cricklade case resolved "That such freeholders as were assessed for the premises in respect of which they claimed to vote, either in their *own* names, or in the names of their *tenants* actually occupying the same as tenants of such freeholders, were intitled to vote at the late election for the borough of Cricklade."

And in the case of Buckinghamshire, it was resolved, "That it is *not* necessary that the name of the *owner* should appear upon the rate."

Ibid. 539.

In the two former cases, several votes were decided agreeably to the construction which each of the committees put upon the above statute. These jarring decisions however are since put an end to by the 30 Geo. III. c. 35, which recites the 20 Geo. III. c. 17, and that "the form of the assessment prescribed by the said act and thereunto annexed, denotes that the names both of the proprietor, and the occupier ought to be specified; and doubts have arisen, whether if such form be not strictly pursued, the suffrage of the person claiming to vote be admissible." And that by the 22 Geo. III. c. 31. it is enacted

"That

"That such freeholders only shall be entitled to vote in the election of members to serve in parliament for the [said] borough of Cricklade, as shall be duly qualified to vote at elections for knights of the shire for the county of Wilts, according to the laws in force for regulating county elections at the time of passing the same act."—

and afterwards enacts, "That nothing in the said acts contained shall extend, or be construed to extend, to prevent any person from voting at any election of a knight or knights of a shire to serve in parliament within that part of Great Britain called England, or the principality of Wales, or at any election of a burghers or burghesses to serve in parliament for the borough of *Cricklade*, in the county of *Wilts*, for or in respect of any messuages, lands, or tenements, which have been charged or assessed for six kalendar months next before such election, towards some aid granted, or to be granted to his majesty, his heirs or successors, by a land tax, in the name of the person claiming to vote, or for or in respect of any messuages, lands, or tenements, to which the person so claiming to vote shall have become entitled by descent, marriage, marriage-settlement, devise, promotion to any benefice in a church, or promotion to any office, within twelve kalendar months next before such election, and which messuages, lands, or tenements, shall have been within two years next before such election charged

30. G. III. c. 35.
Person may vote
although tenant's
name is not in
the assessment.

or

ELECTORS FOR COUNTIES.

or assessed to the land-tax, in the name of the Person or persons by or through whom such person so claiming to vote shall derive his title to such messuages, lands, or tenements, or of some predecessor of such person so claiming to vote, *although the name of the tenant or tenants actually occupying such messuages, lands, or tenements, shall not be inserted in such assessment, according to the form of assessment to the said first recited act annexed.*"

and although his own name is not in the assessment.

2. "That nothing in the said acts contained shall extend, or be construed to extend, to prevent any person from voting at any such election of a knight or knights of any shire, or of a burghess or burghesses for the said borough of *Gricklade*, for or in respect of any messuages, lands, or tenements, which have been charged or assessed, for six kalendar months next before such election, towards some aid granted, or to be granted to his majesty, his heirs or successors, by a land tax, in the name of a tenant or tenants actually occupying the same at the time of such assessment being made, *although the name of the person so claiming to vote, or the person or persons by or through whom such person so claiming to vote derives his title, or of the predecessor of the person so claiming to vote, shall not be inserted in the assessment, according to the form of the assessment to the said first recited act annexed.*"

"The

"The above act of the 20. *Geo. III. c. 17. f. 1* directs, that no person shall vote in respect of any *messuages, lands or tenements*, which have not been assessed to the land tax for six kalendar months preceding the election. But it has been held that a rector may vote in respect of tithes let to the parishioner, though he is not assessed for the same: As, in the Gloucestershire case it was moved and resolved in the affirmative 11 to 2. "That Rice Jones rector of Harescombe, who lets his tithes of above the value of 40s. a year, to his parishioners, but is not particularly rated for the same to the land tax, had a right to vote, &c."

What. estate is required to be rated.

Tithes.

Gloster 147.

In the case of J. Tansley his freehold consisted of a field let for a guinea a year and two houses, the one let for twenty six shillings, and the other for twenty four. It was the custom of the parish to assess *land* only, and the voter was assessed for this field only. It was objected that he had not a freehold of forty shillings value; for his land, which was alone assessed did not amount to that sum; but the committee allowed the vote.

2. Lud. 525.

Land only.

The rev. Henry Hinde voted for house and land in his *own occupation*, viz. the parsonage house, for which he was not assessed; but he had three tenements in the parish, held by others his tenants, for which he was assessed. The assessor said it was not usual in his parish to assess the clergyman for the house he lived in. It was

Ibid. 526.

Parsonage house.

N

objected

objected to, because the freehold for which the vote was given, was not assessed; and the party could not now rely upon any other freehold than that given in at the poll. To which the other side answered, it was sufficient to support this vote, that he was assessed for a freehold *in the parish*, named at the poll, though it might not happen to be precisely the estate named, but if it were not so, this particular case should be distinguished, on account of the practice in the place to omit the clergyman's own house from the rate. The vote was held good.

In the Bedfordshire case in 1785, Thomas Whittall's name stood in the column of tenants, in this form, viz.

Rating in joint
or separate sums.

2. Lud. 524.

" Wm. Boyes and Thos. Whittall, £.0 19 0."

The estate belonged to these two. In support of Whittall's vote it was said, that he could not have procured a different method of assessment, if he had appealed against the rate, because he could not require more than to be named upon it. On the other hand it was said, that neither was assessed to any *particular sum*, and the rate was therefore bad according to the third section of the 20. *Geo. III. c. 17.* by which the proportions of the tax to be paid by each several owner, where the occupation is joint, are expressly required to be charged. The vote was held bad.

In the Cricklade case, Jacob and Broom Pin-negar, an uncle and nephew, held an estate in
common

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common for which they voted. It was rated 2. Lud. 537.

thus: "The Mr. Pinnegars." This was held a good assessment of each.

In the same case, W. Jacobs, was rated with six other persons, all in the occupation of their premises, in one joint sum of 5l. 12s. the whole seven being braced together in a circumflex opposite to that sum. His vote was held good. Ibid. 538.

In the Bedfordshire case in 1785, John Vernon, *jun.* esq; voted for a freehold in the occupation of James Harris. The assessment was in the following form:

Form of the rate.

2. Lud. 523.

Landlord.	Tenant.
Mr. Vernon,	Daniel Cleaton,
ditto,	Isaac Pennyfather,
ditto,	James Harris.

John Vernon, *sen.* had voted for the estate occupied by Daniel Cleaton; and the party objecting contended, that these several assessments referred to the *same persons* by means of *ditto* repeated. On the other hand, Mr. Vernon *sen.* proved, that Harris was tenant to his son, not to him, as did the tenant himself. The vote was held good.

In the same case, James Wittenstal and his brother Henry, held the estate in joint-tenancy, the former voted; but as Henry alone was assessed, the vote was held bad.

Persons to be rated.

2. Lud. 508.
Joint-tenants.

2 Lud. 508. Samuel Charlton, voted for an estate, that belonged in equal shares to him and Daniel Charlton. The latter, who was the elder voted for the sitting member, and was not objected to Samuel voted for the sitting member, and was objected to for not being assessed. The rate was of *Mr. Charlton*, which the party objecting contended, should be applied to the elder of the two; and that the sitting member, by not objecting to his vote, had indirectly admitted *him* to be duly assessed under that assessment. The vote was held bad.

2. Lud. 506.
Vicars. In the same case, the Rev. Edmund Whadley, voted for *the tithes as vicar of Houghton*, occupied by T. Brandreth, esq; the assessment was *T. Brandreth, esq; for house land and tithes in his own occupation*. It appeared that the vicarage had been endowed with the tithe of two pieces of land; and that there was paid to the vicar annually by the impropiator of the great tithes, in consequence of an agreement made a century ago, the price of two quarters of wheat and two of barley, in lieu of his tithe. The present impropiator had paid it to the voter and his predecessors 30 years: He understood the agreement to have been originally made by his ancestor, in order that he might collect the whole tithes of the parish. It was argued in support of the vote, that the resolutions * of the committee were applicable only to the common connec-

* Vide these resolutions, *supra*, p. 173.

tion of landlord and tenant, which was materially different from that subsisting between the voter and Mr. Brandreth; who did not hold the tithes in quality of tenant to the voter. That in such cases the assessment of the *subject of the vote*, without reference to the owner, was all that could reasonably be expected. The committee held the vote good.

In the same case, the Rev. W. P. Netherfole, 2. Lud. 507. voted for the vicarage of Ledlington. The voter received 10l. a-year from the impropiator of the great tithes (Lord Ossory) in right of his vicarage; and was no otherwise assessed for it than under the name of Lord Ossory. This case was compared to the preceding case, and it was said to be impossible for the vicar to get *his* name inserted in the rate, by any means allowed him by law. The vote was allowed.

The Rev. Richard Dowbiggen, ibid. voted for glebe and tithe in the occupation of Lord Leigh. The assessment was "Lord Leigh for tithe occupied by John Mann." It appeared that Lord Leigh had a lease for lives of the prebend of Leighton Buffard, of which the voter was prebendary. Mann rented the tithe of Lord Leigh, who paid upwards of 76l. a-year to the voter being the reserved rent of his lease of them. The vote was held good. Prebendary.

In the same case, Hugh Smith, voted for a 2. Lud. 508. Cestui-que-trust. freehold, of which he had been in possession two

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years under the same circumstances, as his brother James, mentioned in the former part of this title; (*supra* p. 136.) but the elder brother (Thomas) was assessed for it. In support of the vote, it was contended that Thomas who had the legal estate, was properly a trustee for his brother, and he being assessed, and the voter having possession as of an equitable estate, the assessment ought to be considered as a virtual one of Hugh the voter. But the committee held the vote bad.

2. Lud. 501.
Schoolmasters.

In the same case Thos. Gardner and Peter Mason, voted each for *land and tithe in the occupation* of Edward Rudd. They were schoolmasters; of free schools instituted by the will of Sir John Cotton in 1726, under their appointments they received annual salaries out of an estate settled by the will for those uses. The estate was assessed under the name of "*Charity-land.*" The votes were held good.

Ibid. 502.

So, where Richard Shadbrook voted for land in the occupation of Joseph Lilley, as schoolmaster of Keysoe, in right of which he received the rent of a farm, called Bolnhurst school farm. The assessment was of "*Bolnhurst school farm, Joseph Lilley (tenant).*" The vote was allowed.

Ibid.

And the vote of the Rev. J. Thompson was also held good, under the same circumstances. The assessed was of "*Kimbolton school farm, J. Parsler (tenant).*"

In

In the Cricklade case, William Kempe voted ^{2. Lud. 539.} for a freehold which belonged to him as schoolmaster of Lineham, the assessment was of "*The schoolmaster of Lineham,*" and the vote was held good.

The following cases arose before the Bedfordshire committee under the exceptions mentioned in the second section of the 20. *Geo. III. c. 17.* ^{2. Lud. 528. Devices.} (supra p. 160.) As to the vote of Thomas Cave. His mother was assessed. His freehold was devised to him by his father's will; and he came of age within a year before the election. His was held good.

So was that of Richard Pedder's, who voted ^{Ibid.} for a freehold in his own occupation. It was assessed under the name of Thomas Britton, as owner and occupier. Britton married the voter's mother, and held possession of this estate till the voter came of age. The latter obtained possession only a few months before the election.

But, the vote of William Mantle was held bad ^{Ibid.} under the same circumstances as the foregoing, except that Mantle was *twenty-five* years old. The estate was the mother's till the voter came of age, and the step-father since that time, received the rents for his use.

Henry Field. The assessment for his freehold was of Thomas Field his elder brother. The father had been dead some years, and the elder brother managed his estate (which was devised to

^{2. Lud. 528.}

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the children equally) and was rated for the whole, including the voter's part of it. Henry came of age in May 1783, but this was unknown to the assessor. It was contended, that this vote ought to be allowed upon the same principle as that of Pedder; because the time of the voter's taking by the devise, ought, for this purpose, to be reckoned from the day of his coming of age; which would bring the case within the exception of the act. This vote was allowed.

Ibid. 529.
By marriage.

As to the vote of Thomas Joyce. The assessment was thus: "Mr. Bull, Thomas Joyce" (tenant). The voter polled for his wife's estate, whom he married a very short time before the election. She was the daughter of one Love, from whom she derived the estate, and came of age within two years before the election; and at the same time obtained possession of the estate from her guardian Mr. Bull. He had married Love's widow; and in right of his wife had managed the estate of the voter's wife, as her guardian, till her coming of age, and as such came to be named in the assessment. The voter was in possession of the estate as *tenant*, when the vote was made, and before his marriage. Against the vote it was said, that the exception in the second section of the act (*supra* p. 160.) did not extend to this case; because it did not appear that the tenement had been assessed, "within two years next before the election, in the name of
the

the person through whom the voter claimed." on the other side it was said, that the wife having come of age, within the two years, and having then got possession of the estate from Mr. Bull, the rating of him ought (consistently with the decisions in the cases of Pedder and Field just mentioned) to be taken upon an equitable construction of the statute, to be within the exception. The vote was held bad.

Where a person votes in respect of an annuity, the 3. Geo. III. c. 24. s. 1. "*To prevent fraudulent and occasional votes in the elections of knights of the shire, and of members for cities and towns which are counties of themselves, so far as relates to the right of voting by virtue of annuity or rent charge,*" enacts, "That from and after the first day of August, 1764, no person shall vote for electing any knight or knights of a shire, citizen or citizens, burgesses or burghesses, of any such city or town for that part of Great Britain called England, for or in respect of any annuity or rent charge issuing out of freehold lands or tenements, and granted before the first day of June, 1763, unless a certificate, upon oath, shall have been entered twelve calendar months, at least, before the first day of such election, with the clerk of the peace for the county, riding or division, or with the clerk of the peace, town clerk, or other public officer, having the custody of the records

Not having their annuities duly registered.

3. G. III. c. 24.

No person may vote in elections of knights of the shire, or of members for cities and towns which are counties of themselves, in right of any annuity or rent charge granted before 1 June, 1763, unless a certificate be entered with the clerk of the peace, or other proper officer 12 months before any such elections begin;

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cords within such city or town where such lands or tenements do lie, as follows (that is to say),

" I, A. B. of _____ am really and bona fide seized of an annuity or rent charge, for my own use and benefit, of the clear yearly value of forty shillings, above all rents and charges payable out of the same, wholly issuing out of freehold lands, tenements, or hereditaments, belonging to C. D. of _____ situate, lying, and being, in the parish, township, or place, or in the parishes, townships, or places of E. in the county of _____ without any trust, agreement, matter, or thing to the contrary notwithstanding; and I, or the person or persons under whom I claim, was or were seized of the said annuity or rent charge before the first day of June, 1763."

and in like manner with respect to such qualifications as shall come by descent, marriage, devise, presentation, or promotion :

2. " That no person shall vote for the electing any knight or knights of a shire, or for a citizen or citizens, burghers or burgesses, of any such city or town, for that part of Great Britain called England, in respect of any annuity or rent charge issuing out of freehold lands, tenements, or hereditaments, which shall come to such person by descent, marriage, marriage settlement, devise, or presentation to a benefice in a church,

or

or promotion to an office, within twelve calendar months next before such election respectively, unless a certificate upon oath, or affirmation if a *Quaker*, shall have been entered with the clerk of the peace, town clerk, or other officer as aforesaid, before the first day of such election, as follows; that is to say,

" I, *A. B.* of _____ am really and bona fide seized of an annuity or rent charge, to my own use and benefit, of the clear yearly value of forty shillings a year, above all rents and charges payable out of the same, wholly issuing out of freehold lands, tenements, or hereditaments, belonging to *C. D.* of _____ situate, lying, and being in the parish, township, or place, or in the parishes, townships, or places of _____ in the county of _____ without any trust, agreement, matter or thing to the contrary notwithstanding; and I became seized of the said annuity or rent charge, on the _____ day of _____ last past, by descent or otherwise" (as the case may happen.)

3. " That from and after the said first day of August, 1764, no person shall vote at any election of a knight or knights of the shire, or of any citizen

Nor may any person vote in any election as aforesaid, after 1 Aug. 1764.

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in respect of any annuity or rent charge granted after the said 1 June, 1763, unless a memorial of the grant duly attested and registered, as aforesaid.

citizen or citizens, burgess or burgessees, of any such city or town, within that part of Great Britain called England, for or in respect of any annuity or rent charge to be granted after the first day of June, 1763, unless a memorial of the grant of such annuity or rent charge shall have been registered with the clerk of the peace of the county, riding, or division, or with the clerk of the peace, town clerk, or other public officer, having the custody of the records, within such city or town where the lands or tenements out of which such annuity or rent charge issues shall lie, twelve kalendar months at least before the first day of such election; which memorial shall be wrote on parchment, and directed to such clerk of the peace, town clerk, or other public officer, and shall be under the hand and seal of the grantor or grantors, and attested by two witnesses, one whereof to be one of the witnesses to the execution of such grant; which witnesses shall, upon oath, before such clerk of the peace, town clerk, or other officer as aforesaid, or their deputies, prove the sealing and delivering of such grant, and the signing and sealing of such memorial; and which memorial shall contain the day and year of the date, and the names, additions, and abodes, of the parties and witnesses, and all the lands and tenements out of which the annuity or rent charge issues, and the parish, township, or place, or the parishes, townships, or places,

where such lands and tenements lie; and that every such grant, of which such memorial is so to be registered, shall, at the time of entering such memorial, be produced to such clerk of the peace, town-clerk, or other officer, as aforesaid, or their deputies, who shall thereon indorse a certificate, in which shall be mentioned the day and year on which such memorial shall be so entered."

Such grant to be produced at the time of registering, and the day and year of entering the memorial to be indorsed thereon by the proper officer;

4. "That from and after the said first day of August, 1764, no person shall vote at any election of a knight or knights of the shire, or of any citizen or citizens, burgesses or burghesses of any such city or town, in that part of Great Britain called England, by reason of assignment of any annuity or rent charge, or any part or parts thereof, made before the said first day of June, 1763, unless a certificate of such assignment upon oath, to the purport herein-before mentioned, with respect to an original annuity or rent charge, shall have been entered with such clerk of the peace, town clerk, or other officer as aforesaid, twelve calendar months at least before the first day of such election; and that no person shall vote at any such election as aforesaid, by reason of an assignment of any annuity or rent charge, or any part or parts thereof, made after the first day of June, 1763, unless a memorial of such assignment, and also a memorial of the grant of such annuity or rent charge of which such assignment shall

Nor may any one vote in right of any assignment of any annuity or rent charge made before 1763,

unless a certificate of the original annuity be entered as aforesaid;

and if the assignment be made after the said 1 June, then a memorial thereof, and of the grant, to be attested and registered as is directed in cases of original grants.

shall be made, shall have been attested and registered twelve kalendar months at least before the first day of such election, in the same manner as is herein-before directed with respect to the memorial of an original grant or rent charge."

5. "That the clerk of the peace of every county, riding, or division, and the clerk of the peace, town clerk, or other officer as aforesaid, of every such city or town, shall keep a book or books for entering of every such certificate and memorial, and shall be allowed for the entry of every such certificate the sum of one shilling, and of every such memorial, two shillings and no more; and for ever search for any certificate or memorial, one shilling, and no more: and that any person or persons may, at all seasonable times, resort to, and inspect the certificates, memorials, and books of entries thereof; and such clerk of the peace, town clerk, or other officer as aforesaid, or their deputies, is hereby directed and required forthwith to give a copy of any certificate or memorial to any person or persons who shall desire the same, paying for such copy, if it contains not more than two hundred words, the sum of sixpence; and so in proportion for any greater number of words; and such clerk of the peace, town clerk, or other officer as aforesaid, or their deputies, is hereby empowered to administer an oath in all cases where an oath is required by this act; and true copies of the aforesaid

Books to be kept by the proper officers for entering such certificates and memorials.

Fees for entry, and search,

and for copies.

Officer may administer an oath in cases aforesaid. Copies attested by

said

said certificates and memorials attested by such respective clerks of the peace, town clerk, or other officer as aforesaid, or their deputies, shall, at all times, be allowed and admitted as legal evidence in all cases whatsoever."

the proper officer deemed legal evidence.

6. Provided, " That a memorial of such grant or assignment as shall be made and executed in any place not within forty miles of the office of the clerk of the peace for the respective county, riding, or division, or of the town clerk, or other officer as aforesaid, shall be entered and registered by such clerk of the peace, town clerk, or other officer as aforesaid, or their deputies, in case an affidavit sworn, or affirmation of a *Quaker*, before one of the judges at Westminster, or a master in chancery ordinary or extraordinary, be brought with the said memorial to the said clerk of the peace, town clerk, or other officer, as aforesaid, wherein one of the witnesses to the execution of such grant or assignment shall swear that he or she saw the same executed; and the same shall be a sufficient authority to the clerk of the peace, town clerk or other officer, or their deputies, to give the party that brings such memorial a certificate of the registering such memorial; which certificate, signed by the said clerk of the peace, town clerk or other officer, as aforesaid, or their deputies, shall be taken and allowed as evidence of the registry of the same memorial in all courts of record whatsoever;

any

Memorials of grants or assignments made and executed above 40 miles from the office of clerk of the peace, &c. to be registered, upon producing an affidavit made by one of the witnesses before one of the judges at Westminster, or a master in chancery.

any thing herein contained to the contrary notwithstanding."

Officer, or deputy, to attend, upon reasonable notice and satisfaction, with the books of entries at any such election.

7. "That the clerk of the peace of every county, riding, or division, and the clerk of the peace, town clerk, or other officer, as aforesaid, of every such city or town, or their deputies, shall, upon reasonable notice, attend at any such election with the book or books of entries of every such certificate and memorial, at the request of any candidate or candidates; he or they making him reasonable satisfaction for such attendance."

Officer guilty of any neglect or misdemeanor, forfeits 100l.

8. Officers acting contrary to that act, forfeit one hundred pounds to the person who shall sue for the same, by action of debt, &c.

Limitation of prosecutions.

9. No person to be liable to any forfeiture or penalty by that act, unless prosecution is commenced within twelve months.

What annuities require registration.

Gloster 40.

"*Any annuity*"—Gloucestershire. The Rev. John Jones was objected to as having voted for an annuity not registered. The annuity for which he did vote was a payment of 20l. a-year in lieu of tithes. It was moved and carried 13 to 1. "That the Rev. John Jones, standing on the poll as voting for a salary issuing out of great tithes, is obliged to register the same under the act for registering annuities or rent charges."

Salary out of great tithes.
2. Lud. 505.
Annuity by devise.

Bedfordshire. Edward Pinnard voted for an annuity, under a will, by which it was charged upon the testator's estates. It was not registered,

nor

nor assessed to the land tax *, otherwise than under the names of those to whom the estates belonged. The committee held the vote bad.

In the same case, one of the objections to the vote of Daniel Palmer was that he could not vote in right of an annuity devised to him before 1763, because it was not registered according to the above act of 3. Geo. III. c. 24. In support of the vote as to that objection, the counsel argued, that the act did not extend to annuities coming by devise. Because the design of the act is to prevent fraudulent and occasional grants of a rent charge, and for this purpose the word *grant* is the ruling phrase in it; which word in law is always used to denote a contract *inter vivos*, and never applied to devises. That the regulations prescribed in the act for the registering annuities are such as can relate only to grants, viz. the memorial is to be *under the hand and seal of the grantor*, which cannot be had after his death; and the witness *to the execution of the grant* (a form of expression not usual in the case of wills) is to attest the sealing and delivery, at the time of registration. That this construction of the act is further justified by the second section, which includes expressly the different modes of acquiring annuities by succession, descent, de-

It was said in argument by the counsel in this case of Bedfordshire that an annuity not requiring to be registered, must be assessed to the land tax. 2. Lud. 499.

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vise, and promotion, and requires a registration only when these accrue within twelve months before the election. The voter was also objected to as having voted for *house and land* (for which he was not *assessed*) when his freehold was an annuity of 100l. issuing out of the house and land, and the counsel objecting to the vote principally relied on the effect of the latter objection. The committee held the vote bad.

Reserved or fee-farm rents, do not not require registration.

Gloster 58.

“*Or rent charge*”—As neither reserved, nor fee-farm rents, are mentioned in the above act, the committee in the Gloucestershire case resolved *nem. con.* “That a reserved or fee-farm rent, need not be registered under the act for registering annuities.”

Ibid 127.

In the same case, Samuel Harrington was objected to as having voted for an annuity not registered. One Merrinear pays from his estate a fee-farm rent of 5l. which was formerly paid to Dee, who bequeathed it to the voter. It was contended that an annuity coming to the voter by *will*, and not by *grant* does not require to be registered. The committee resolved *nem. con.* “That the annuity for which Samuel Harrington voted, and which devolved to him in 1762, by the will of John Dee, does not require to be registered.”

What description necessary in the memorial.

Gloster 38.

Mr. Bathurist's vote was objected to in the same case for not having properly registered the annuity in right of which he voted. It appeared that

that the annuity was secured to him by the marriage settlement of his father (Lord Bathurst); but he registered it as coming to him by descent. The committee resolved 8 to 7, that he had no right to vote.—There were only fourteen gentlemen left on the committee, when this vote was decided, and at first the division was equal; but the chairman gave a casting vote against Mr. Bathurst.

IV. *Of votes lost from informality in giving them at the poll.*

The vote of a freeholder will be lost, by not attending to the regulations prescribed by the 8th section of the 18 Geo. II. c. 18. (supra p. 40.) As in the case of Bedfordshire. The Rev. Decimus Reynolds, went to the polling booth of the hundred of Flitt, and there was sworn and declared his vote for Lord Ongley, for a freehold at Thurley which is in the hundred of Willey. He also possessed a freehold in the hundred of Flitt, but said nothing of that at the poll. There was no entry of his name in the poll book, or in either of the party's check books. After he had (as he thought) given his vote, he was told at the polling place to go to the Willey booth; but he did not go, thinking his vote had been properly taken down in Flitt. The committee refused to add his vote to the poll.

Not voting in the proper booth.

18. G. II. c. 18.

2. Lud. 420.

2. Lud. 509.

In the same case William Leigh voted for a tenement in Sandy parish, in the poll book of the hundred of Biggleswade. It was assessed in a rate for the hamlet of Beeston, part of which only is in Sandy. The parish of Sandy is in the hundred of Biggleswade, but Beeston is in that of Wixamtree; although with respect to church and poor rates, it is considered as a hamlet of Sandy. The objection was, that the voter had no freehold *as described* duly assessed, because he voted in the Biggleswade booth. It was said in answer, that it did not signify in what parish or hamlet the freehold was assessed, provided it were assessed in any. The vote was allowed.

Ibid. 510.

The Rev. Robert Willan polled for a vicarage at Cardington. In this parish he was not assessed; but he likewise held the vicarage of Keyfoe, in another hundred, for which he was duly assessed. The poll clerk proved that the voter was very ill when he came to poll; that another gentleman came with him to speak for him, who said his freeholds were the livings of Cardington and Keyfoe. But he (the clerk) did not enter the latter in his book, because not in his hundred. In the evening the voter desired to have it altered, and both vicarages inserted in the book, but the sheriff refused it. This vote was held bad.

Ibid. 415.

So, as to the vote of John Oliver. He polled in the book for the hundreds of Clifton and Wixamtree,

Wixamtree, for a freehold in Clifton parish, where he had no freehold, but in Shillington he had, and he was assessed for it, in the hundred of Flitt, where that part of Shillington parish lay. The voter was examined to prove that he declared to the poll clerk, his freehold lay in Shillington. But the check books agreeing with the poll book, his vote was deemed bad.

But in the Gloucestershire case, one Benjamin Price was objected to as having no freehold; the place he voted for not being in the list, in the booth where he polled. As the poll clerk had admitted him to vote, though contrary to the directions in the act, the committee were unanimous that he ought not to lose his vote, and therefore over-ruled the objection. Gloster. 120.

If an elector, when he gives his vote, misnames the place, * where his freehold lies, and is rated, his vote will also be lost—In the case of Gloucestershire the committee resolved, Mis-naming the place where the freehold lies, and is rated.
Gloster 140.
“That it was their opinion, that it was necessary for every freeholder at the election when he polls to give in the name of the parish, hamlet, township, tything, or place in which his freehold was situate.” And it was also resolved, that the word “hundred” should not be inserted before the word “parish”, on account of

* By the 10. Anne c. 23. s. 5. (supra p. 39.) the sheriff, or under sheriff or clerk taking the poll, is to enter the place of the elector's freehold as he declares the same at the time he give his vote.

Gloster 178.

the impossibility of finding out any particular freehold in large hundreds. And the same committee determined *nem. con.* "that evidence to prove that Thomas Blanchard had a freehold in a different parish and hundred from those which he gave in at the poll, be not admitted."

2 Lud. 416.

In the Bedfordshire case, the committee disallowed the vote of Thomas Lane who had voted for land in *Barton* parish, when his freehold lay in the adjoining parish of *Higham Gobian*, where he was assessed. The voter's house was very near *Barton*: Letters were directed to the tenant who occupied it, at *Barton* turnpike; and his family went to *Barton* church.

Ibid. 509.

In the same case, Thomas Harwood esq; described his freehold to be land in *Colnworth*. In this parish he was not assessed; but he was duly assessed for an estate at *Roxton*, a different parish in the same hundred. It was at first contended in support of the vote, That as the mistake did not carry the freehold into a different hundred, it was competent to the parties to prove an assessment for a different estate, provided it were in the same hundred; and that it was not necessary to describe the situation by the *parish*. But afterwards the vote was admitted to be untenable.

Ibid. 510.

In the same case, Henry Belfield voted for a freehold in *his own* occupation, in the parish of *Studham*.

Studham. Part of this parish lies in Hertfordshire, the other part in Bedfordshire, in both of which the voter had land. That which he occupied *himself* lay in Herts, that in Bedfordshire was *let*, and the voter was properly assessed for it. The vote was held bad.

The following cases were decided by the ^a *Lud.* 511.
Cricklade committee.—William Hufsey esq. *voted* for a freehold in Highworth, which is a parish consisting of several tythings, separately rated to the land tax. One of these tythings is named Highworth; in this the voter was not rated, but in another. The committee resolved, "That the voter's being rated on the assessment of some or one of the tythings, part of the mother parish of Highworth was sufficient."

H. Mereweather voted for a freehold in Leigh. *Ibid.* 512.
The parish is *Leigh* and *Cleverton*. The assessments are separate, but in the latter place, the voter's freehold was assessed, yet held good.

William Clements voted for a freehold in *Ibid.*
Broad Town. This is a tything in the parish of Cliff Repard, and there are three others, each separately assessed. The voter was assessed in the tything of Cliff, but not in that of Broad Town, in which the freehold voted for lay. His vote was held bad.

John Bailey and two others voted for free- *Ibid.*
holds in Malmesbury. They were situated in the town of Malmesbury, but in the *parish* of West-

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port, in which they were assessed. The parish of Malmesbury has an assessment, and other parochial rights of its own, and so has Westport. The committee passed no resolutions on these votes, but they were considered by the counsel as untenable.

Not correct in describing the estate.

2 Lud. 444.

By the freeholder's oath (*supra* p. 41.) it is necessary for the voter at the poll to describe the estate for which he votes. And the committee in the Bedfordshire case resolved, "That if a voter gives in a freehold on the poll, which is not worth 40s. a year, the vote is to be considered as a bad one, notwithstanding he may be possessed of other freeholds amounting to more than 40s."

Ibid.

In the same case, the vote of William Odell was given up who had voted for premises let for 1l. 11s. 6d. a year; though he had another tenement near this, let to another person for 3l. a year.

Ibid. 446.

But the vote of Timothy Kidman was held good, under the following circumstances. He voted for house and land, in the occupation of John Osborn. This did not amount to 40s. but the voter's freehold consisted of two tenements under one roof, one let of Osborn, the other to Cope, both together paying 3l. 8s. There was only one door in the front; but there were separate stair cases and gardens and in every other respect they were separate dwellings. So was the

the vote of one Perkins under the same circumstances, he described his freehold as consisting of *houses*.

In the Buckinghamshire case, John Creaker ^{2 Lud. 603.} was objected to as voting for a freehold of less than 40s. value. He described it on the poll as land. His freehold consisted of a house, with a yard annexed appurtenant to the house, used as a carpenter's yard. The yard alone was worth 20s. but both together more than 40s. It was contended in support of this vote, that *land* in a legal sense includes building on the land, and where both made one entire tenement, necessarily passed together. The committee by their resolution allowed the inquiry into the value of the house, in order to make out the qualification of the voter.

In the Bedfordshire case, John Gilbert was objected to, principally for not having a freehold of 40s. He described it at the poll, as consisting of *houses*, in the occupation of himself and others. He was assessed as landlord and *tenant*. Proof was offered as an objection to his vote, that the house *he lived in*, was not worth 40s. a year, so that the freehold *for which he voted*, was either not assessed or under value. The principle of the objection was admitted, but the fact as to the value not being satisfactorily proved, the objection was not persisted in. ^{Ibid. 447.}

In

2. Lud. 502.

In the same case, John Hill voted in right of an annuity of 20l. a year devised to him for life, issuing out of lands charged with it. The lands were devised in trust, and the annuity was paid to the voter by the tenant of the land, by the direction of the trustee. He described his freehold at the poll to consist of *house and land*, with the proper tenant. The owner of the estate charged with the annuity was assessed; but the voter was not. The annuity was not registered. It was said in objection to the vote, that it was bad either way; as a freehold estate in land not assessed, and as an annuity not registered. The vote was held bad.

Ibid. 504.

So, where Daniel Palmer voted for *house and land*, in the occupation of John Palmer, and was not assessed. His freehold was an annuity of 100l. a year devised to him before 1763, charged upon the above house and land which belonged to John Palmer. Two objections were made to the vote, 1. That he was not assessed; and it was contended, that he had no such estate as he described at the poll; and 2. That he could not vote in right of his annuity, because it was not registered according to the 3. Geo. III. c. 24. (*supra* p. 185.) The vote was determined to be bad.

Not correct in
naming the te-
nant.

The freeholder's oath also requires, if the freehold for which a person votes, consists in messuages, lands, or tythes, then he is to specify

cify in whose occupation the same are—Thus, the Gloucestershire committee resolved, “that Gloster 93. Archdale Wilkins, not having specified the name of his tenant, at the time of the poll, is a *prima facie* objection, sufficient to put the petitioners on proving the necessary qualifications to entitle him to vote.”

If a voter has several tenants, and gives in Several tenants. the name of one who does not hold 40s. a year under him, his vote will be lost. As in the case of John Noble, who was entitled to one third of Ibid. 165. an estate worth 6l. a year, left by one Farr. At the election the voter gave in the name of one tenant only, where the estate was in the occupation of two. The committee in the Gloucestershire case came to the following resolution. “That John Noble who was entitled to one third part of a freehold estate, by the will of Mrs. Farr, of the annual value of 6l. whereof the tenement in the occupation of John Kingdom, of the annual value of 4l. is a part, and having given in the name of John Kingdom, was not (as far as now appears) entitled to vote, &c.”

But in the Bedfordshire case, Charles Chester 2. Lud. 413. described his freehold to be lands in the occupation of *several persons*. The objection to this vote was, that the freeholder's oath requires the voter to specify the occupier of his freehold by *name*. It was contended that the statute did not declare a vote given without an observance of the

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the regulations prescribed by it void. The committee held the vote good.

a. Lud. 417.

So where Thomas Love voted for house and land in the occupation of J. Cunnington. This tenant occupied a house with a small garden annexed to it, for which and for the fruit of an orchard adjoining he paid 32s. rent: This was all *be* occupied. But there was a little field adjoining belonging to the voter, occupied by another tenant at the rent of 20s. His vote was held good.

Ibid. 522.

And in the same case, George Martin voted for a freehold in Eaton Socon in the occupation of Shefford *and others*: On the assessment the occupier was *himself*. The objection was supported by evidence, that no person of the name of Shefford lived in Eaton Socon; and the voter's estate there was held by different persons; that the voter declared he had named a wrong tenant, at the poll as the one he had mentioned held an estate of him at Keysoe, and not at Eaton. Yet the committee held the vote good.

ELECTORS

ELECTORS FOR CITIES, TOWNS, BOROUGHS, AND CINQUE-PORTS.*

- I. *Of Electors as freeholders.*
- II. *Of Electors as burgage tenants.*
- III. *Of Electors as freemen and burgeses.*
- IV. *Of Electors as inhabitants.*

I. *Of Electors as freeholders.*

THE nature of a freehold, and the other particulars relative thereto, entitling a person to vote for a knight of the shire, having been stated at length under the foregoing title; all that remains for notice here respecting the right of

* The qualifications of persons as electors for citizens and burgeses to serve in parliament, are various, as will be seen from this title, and it seems, the origin of this diversity cannot be explained with any degree of certainty. 4. Doug. 80. This variety formerly occasioned infinite disputes; but they are now in some degree settled by the fourth section of the 2. Geo. II. c. 24. which directs, those votes to be deemed legal, that have been so declared by a last determination. But, where the right is now unsettled, it is prudent for an elector when he gives his vote, to vote generally, and not in a particular character. Thus in the case of Seaforth in 1792. Mr. Serjt. Kemp, being a freeman of that place, and also an inhabitant house-keeper paying scot and lot, when he tendered his vote, said, "I vote as a *freeman*, and make the best of it." The committee decided that freemen had no right, and therefore rejected Mr. Serjt. Kemp's vote as bad, being given in the exercise of a supposed right which turned out bad, though as an inhabitant, &c. he had a right to vote. Simeon 136.

voting,

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voting, are those particular legislative regulations which affect freeholds in cities and towns, counties of themselves.

It has been seen (*supra* p. 153.) that the first step the legislature took, to prevent fraudulent votes, was by enacting, that all conveyances to multiply voices, or to split and divide the interest in any houses or lands, among several persons, to enable them to vote at elections of members, should be void; and that no more than one voice should be admitted for one tenement. This was general, and not confined to electors for counties only; but the subsequent regulations, by the 10th of *Ann*, c. 23, and the 12th. of *Ann*, *ft.* 1. c. 5. were confined to electors for knights of the shire only.

However, it being thought necessary that the provisions contained in the two last mentioned statutes, should be extended to cities and towns, counties of themselves, wherein persons have a right to vote in respect of an estate of the yearly value of 40s. the 13th *Geo. II. c.* 20, after reciting the 10th of *Ann*, c. 23. *ft.* 1 and 2, (*supra* p. 154) and the 12th of *Ann*, *ft.* 1. c. 5, (which last mentioned act is since repealed by the 18th *Geo. II. c.* 18. *ft.* 2,) it enacts, "That the said provisions contained in the said in part recited act, made in the 10th year of the reign of queen *Ann*, for preventing fraudulent conveyances in order to multiply votes for electing knights for shires,

shires, and in the said act made in the next sessions of parliament, shall be extended and construed to extend, to such lands or tenements, for or in respect of which any person shall vote for the election of any member to serve in parliament for any such city or town as aforesaid, being a county of itself, in that part of Great Britain called England, and that if any person shall vote for the election of any such member as a freeholder not having such an estate for one year before the same election, (and so charged or assessed as in the said acts or one of them is described, except in cases therein excepted,) every such person shall be subject to the like penalties and forfeitures, as are by the said act made in the 10th year of the reign of queen Anne imposed on persons voting for knights of shires, not having the qualifications thereby required."

Persons voting as freeholders not having an estate one year before election, subject to the penalties and forfeitures ordained by 10. Anne.

But the 19th *Geo. II. c. 28. §. 2* recites, 19. G. II. c. 20.

"Whereas by an act made in the 10th year of 10. A. c. 23.
the reign of Queen Anne, intituled, An act for the more effectual preventing fraudulent conveyances in order to multiply votes for electing knights of shires to serve in parliament, it was enacted, That no person should vote for the electing a knight of the shire within that part of Great Britain called England, in respect or in right of any lands or tenements which had not been charged or assessed to the public taxes,
church

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12. A. D. 1. C. 5.

church rates, and parish duties in such proportion as other lands or tenements of forty shillings *per annum* within the same parish or township where the same should lie or had been usually charged: And whereas by an act of parliament made in the 12th year of the reign of her said late majesty queen Anne for explaining the said recited clause, it is enacted, that the said act or any thing therein contained shall not extend, or be construed to restrain any person from voting in such election of any knight of a shire within that part of Great Britain called England, in respect or in right of any rents, tithes, or other incorporeal inheritances, or any messuages or lands in extra-parochial places, or any chambers in the inns of court, or inns of chancery, or any messuages or seats belonging to any offices, in regard or by reason that the same have not been usually charged or assessed to all or any the public taxes, church rates, and parish duties aforesaid, or in respect or right of any other messuages or lands not therein before specified in regard or by reason that the same have not been usually charged or assessed to all and every the public taxes, church rates, and parish duties aforesaid, provided that such messuages or lands have usually been charged or assessed to some one or more of the said public taxes, rates, or duties, in such proportion as other messuages or lands of forty shillings *per annum*, in the same parish

or

or township where the same shall lie or be, are usually charged to the same; which said provisions are recited in an act of parliament made in the 13th year of the reign of his present majesty, intituled, An act for the more effectually preventing fraudulent qualifications of persons to vote as freeholders in the election of members to serve in parliament for such cities and towns as are counties of themselves, in that part of Great Britain called England; and are therein enacted to extend and to be construed to extend to such lands or tenements for or in respect of which any person shall vote for the election of any member to serve in parliament for any such city or town as aforesaid, being a county of itself in that part of Great Britain called England: And whereas by an act passed in the last session of this present parliament, it is enacted, That so much of the said recited acts of the 10th and 12th years of the reign of the late queen Anne, as disables any person to vote for knights of shires in respect or in right of lands or tenements which have not been charged or assessed as therein mentioned, shall be and is repealed:” And enacts, “ That so much of the said recited act of the 13th year of the reign of his present majesty as extends the said provisions to such cities and towns that are counties of themselves as aforesaid, shall also be and it is hereby repealed.”

13. G. II. c. 20.

18. G. II. c. 3.

Part of the act of
13. G. II. re-
pealed.

P. 3. “ That

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Qualifications of persons who shall vote for members for cities or towns being counties.

3. " That no person shall vote for the electing a member or members to serve in parliament for such city or town, being a county of itself as aforesaid, within that part of Great Britain called England, in respect or in right of any freehold, messuages, lands, or tenements, of the yearly value of forty shillings as aforesaid, which have not been charged or assessed towards some aid granted or hereafter to be granted to his majesty, his heirs or successors by a land tax in Great Britain, twelve kalendar months next before such election. Provided, that nothing herein contained shall extend, or be construed to restrain any person from voting in any such election for cities and towns as are counties of themselves as aforesaid, in respect or in right of any rents, or any messuages or seats belonging to any offices in regard or by reason that the same have not been usually charged or assessed to the aid commonly called the land tax; and the acting commissioners of the land tax for the time being, or any three or more of them at their meetings, shall sign and seal one other duplicate of the copies of the assessment or assessments, to be delivered to them by the assessors after all appeals determined, and the same shall deliver, or cause to be delivered to the persons officiating as clerks of the peace within the districts of the said cities and towns, being counties of themselves as aforesaid respectively to be by them kept amongst the records

Exception.

Commissioners of the land tax to sign duplicates of the assessments to be delivered to the clerks of the peace, &c. and filed.

records of the sessions, to which all persons may resort at all seasonable times, and inspect the same, paying sixpence for such inspection; and the said persons officiating as clerks of the peace or their deputies, are hereby required forthwith to give copies of the said duplicates, or any part thereof, to any person or persons who shall require the same, paying after the rate of sixpence for every three hundred words, and so in proportion for any greater or less number."

Copies to be given to persons paying for them.

4. " That no person shall vote in such election of a member or members to serve in parliament for any city or town, being a county of itself, and in which persons have a right to vote for such members, for and in respect of lands, tenements, or hereditaments of the yearly value of 40s. unless such persons shall have a freehold estate in the city and county, or town and county, for which he votes, of the clear yearly value of forty shillings, over and above all rents and charges payable out of or in respect of the same, and shall have been in the actual possession or in receipt of the rents and profits thereof for his own use above twelve kalendar months, except the same came to him within the time aforesaid, by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or by promotion to an office; and no person shall vote in respect or in right of any freehold estate which was made or granted to him fraudulently, on

Persons voting, to have a freehold estate of 40s. &c.

And to be in possession above 12 months.

Exception.

ELECTORS FOR CITIES, TOWNS,

Penalty 40l.

purpose to qualify him to give his vote, or shall vote more than once at the same election."—Any person voting contrary to that act forfeits to any candidate for whom such vote shall not have been given, and who shall first sue for the same, forty pounds.

Taxes not with-
in this act.

5. "That no public or parliamentary tax, church or parish rate or duty, or any other tax, rate, or assessment whatsoever, to be assessed or levied within such cities or towns, being counties of themselves as aforesaid, is or shall be deemed or construed to be any charge payable out of or in respect of any freehold estate, within the meaning and intention of this act, or of the oath or solemn affirmation hereinbefore directed to be administered to, and taken by, every freeholder, if required, as aforesaid."

Limitation of the
act.

13. "This act or any thing herein contained (other than, and except such clauses and provisions as are by this act made for or concerning allowing cheque books, or for or concerning notice to be given of the time and place of election (and proceeding to election thereupon) shall not extend, or be construed to extend to any city or town being a county of itself, or to any person or persons where the right of voting for any member or members of any such city or town is, for or in respect of burgage tenure, or where the right of voting, for such member or members for

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for or in respect of a freehold, does not require the same to be the clear yearly value of *forty shillings*."

II. Of electors as burgage tenants.

Electors as burgage tenants, are those who hold property by burgage tenure, which according to Littleton, "is where an ancient borough is, of which the king is lord, and they that have tenements within the borough, hold of the king their tenements; that every tenant for his tenement ought to pay to the king certain rent by year, &c. and such tenure is but tenure in socage." "The same is where another lord spiritual or temporal is lord of such a borough, &c." There are in England about twenty nine burgage tenure boroughs, and it was said by lord C. J. Holt in the case of *Ashby and White*, that it is part of the constitution of England, that these boroughs should elect members to serve in parliament, and that such right of election is a privilege annexed to burgage land, and is a real privilege.

Litt. f. 162. 163.

1. Doug. 224.

Ld. Raym. 951.

The counsel in the first *Downton* case, defined a burgage tenement to be, "one undivided and indivisible tenement, neither created, nor capable of being created within time of memory, which has immemorially given a right of voting." In the second it was defined to be, "an

Definition of a burgage.

1. Doug. 217.

1 Lud. 172.

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entire * indivisible tenement, holden of the superior lord of a borough, by an immemorial, certain rent, distinctly reserved, to which the right of voting is incident."

These definitions, comprehending every qualification attendant on a burgage tenement giving the right of voting, will very properly form a key to the cases on the subject:

Entirety.

"One undivided (or entire) and indivisible tenement, neither created, nor capable of being created within time of memory." The notion of entirety and indivisibility, and the distinction between freeholds of burgage tenure and other borough freeholds, are observed by Mr. Luders, to be but modern, as it is impossible says he, otherwise to account for the number of irregular burgage rents, payable for tenements having an acknowledged right of voting, and as will presently be shewn.

1. Lud. 302, n. M.

2. Frazer 40.

The counsel for the sitting members in the case of Horsham, insisted, that this part of the definition of a burgage tenement, was applicable only to burgage tenure according to the law of parliament, such as in Downton † and a few others

* The entirety of any tenement, as well as its being of burgage tenure, are proved by reference to the burgage rolls or presentments belonging to the manor court, and by parol evidence of its corresponding with the entry on the roll when the vote was given.

† The right of election in Downton, as admitted by the parties, is "In persons having a freehold interest in burgage tenements, holden by a certain

others of that kind where it was decided that the freeholds might be conveyed without any consideration the moment before an election; and not to those at common law as explained by Littleton, where the land by virtue of the statute of *quia emptores*, admits of being split into any number of parts, each of which carries a vote, provided the splitting act does not attach upon it. Yet the committee were of a different opinion, and through the whole of the case, held the entirety of a tenement necessary to constitute a vote, as appears from the following cases: *

Samuel Toovey claimed to vote for "a messuage or tenement with the garden and appurtenances thereto belonging, formerly known by the name of the *Star*, or by whatsoever name, &c." In the survey or roll in 1611 †, the premises were described "one messuage, *one barn*, one garden, and one orchard, with the appurtenances, &c." but in a conveyance of 1734, of certain rent, fealty, and suit of court, of the bishop of Winchester, who is lord of the borough, and paying reliefs on descent, and fines on alienation." 1 Doug. 208. 1. Lud. 113.

Horsham.
2. Frazer 78.

* It may be proper to acquaint the reader, that only those cases that appeared to be of general use, are selected from the report of this case. Mr. Frazer has given a very laborious statement of every case that arose before the committee.

† This survey or roll of the burgages, was delivered in to the committee and it was understood by all parties, that every burgage must be referred to some entry on that roll, and proved to exist now, as it was there described. And Mr. Frazer has noticed cases, when the present existence of the tenement, did not correspond with the entry on the roll, the votes were admitted to be bad.

these premises, the word *brewhouse* was substituted in the place of *burn*, and a witness in describing the premises, said they consisted of a house and other buildings, a brewhouse and garden; and that there was an orchard adjoining. On this proof, the counsel objected to the entirety of the burgage, denying that "appurtenances" in the deed to the voter, would convey a barn and orchard. In answer it was insisted that the general name of the "Star," was sufficient to pass the whole of the premises; and that it was a fair presumption that in the lapse of time the trees might be cut down or decay, especially as no account was given of the severance of the orchard, or that any person was entitled to the separate occupation of it, or that it existed at all. Under these circumstances the committee held the entirety of the tenement not to have been destroyed: by deciding the vote to be good.

2. Fraser 79.

James Holroyd claimed to vote for "a croft and piece or parcel of garden ground commonly called, &c. *Patchings*, &c. A witness described the premises to consist of about a *quarter of an acre*. The entry in the roll did not say what the tenement consisted of; but a conveyance in 1713, described it to be *two acres*. This variance was admitted to be fatal to the vote. But where there was a difference in the description of the premises of one garden instead of two, and the boundaries coincided, that was held not to destroy

Ibid. 120.

destroy the vote. There are a variety of cases mentioned by Mr. Frazer, where voters, who had claimed to vote for *parts* of tenements, were admitted to be bad. 2. Frazer 79. 82. passim.

Three voters had conveyed to them, "one sixth part, the whole in six equal parts to be divided of and in all those two fields or closes of land, formerly but one field, called Bishop's, afterwards Seal's, &c. containing, &c. 8 acres." The entry on the will was, "one meadow containing, &c. 7 acres with the appurtenances formerly the aforesaid Bishop's, and late Seal's aforesaid, being entire burgages, by the rent, by the year, &c. six shillings." Their votes were admitted to be bad. From which it is evident that this division destroyed (or at least suspended) the right of voting in respect of any of these tenements; for as the right is attached to a whole burgage, it cannot, from its indivisible nature, be exercised for a part; yet that right it should seem, might be revived by a re-union of those parts. Ibid. 107.

"*Holden of the superior lord of a borough by an immemorial certain rent.*" This appears from Littleton to be incident to a burgage tenement. But the rents to be paid to the lord of the borough, may be different in amount: As in the case of Downton, where there are "burgages," "half burgages," and "quarters of burgages." Ibid. 113.
Tenure and rent.
1. Doug. 218.

The

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1. Lud. 303. n.
M.

The rent for a whole burgage is one shilling, for half of a burgage sixpence, and for a quarter of a burgage threepence, and it appeared that one burgage paid sevenpence-halfpenny. So in Clithero where the regular burgage rent is 1s. 4d. There are burgages paying 8d. called half boroughs, and others paying 6d. and 4d. In Pontefract (which is of burgage tenure, though not of burgage representation) where the rent is a shilling, and has been so from the time of Richard the first, there are burgages, paying 6d. and 8d. In Westbury either 4d. or 2d. is a burgage rent. In Berealston the resolution of the house allows 3d. *or more*. Yet these rents must be immemorial; for if the contrary appears, the right of voting is destroyed; as was decided in several cases before the Horsham committee.

2. Frazer 82.
passim.

1. Lud. 169.

“*Distinctly reserved.*” This was held necessary by the committee in the Downton case in 1784. There, an objection was made to five voters, that their tenements were only subdivided, and uncertain parts of burgages, by reason of there being only one rent reserved for the whole. The five burgages they held went by the name of Farr’s, having been formerly sold to Sir Charles Duncombe by one Farr. The description of them in the deeds to the voters was thus: “All that ancient burgage, consisting of a house and garden behind the same, situate, &c. formerly

formerly Farr's." The court book of the borough was referred to in order to prove the title to those burgages: In an entry in 1706, there was a presentment of the descent of five burgages and a half from N. Farr to R. Farr, the rent 3s. and 6d. There was another presentment in 1708, of the alienation of R. Farr to Sir C. Duncombe of these five burgages and a half; the entry in the quit-rent-roll to which they were applied was thus: "For that which was Farr's, 3s. 6d." Five burgages had been granted out of Farr's, for which the five voters before-mentioned tendered their votes: No evidence was produced on either side, as to the half burgage. As it could not be shewn that ever distinct rents had been reserved for these five burgages, the committee disallowed their votes.

III. Of electors as freemen and burgeses.

Freemen and burgeses form integral parts of those corporations who have the right to elect members of parliament, conferred on them by a subsisting charter or exercised by prescription, which presumes a pre-existent charter. The other members of corporate bodies, are of various denominations.

The question whether, when an integral part of a corporation is gone, and the corporation has no power to restore it, or to do any corporate act,

Loss of an integral part of a corporation.

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act, it is thereby dissolved and incapable of exercising the right of voting, was fully discussed in the two cases of *Helleston*. In the first, the committee seem to have considered it capable of electing members, by declaring the petitioning candidates duly elected, who had been chosen by the old corporators, though a new charter had been granted by the crown and the sitting members elected and returned by a majority of the corporation under it*. In the second, there was a double return, one by a majority of the new corporators, and the other by one Penhal, who was the only surviving *old* corporator; but the committee held the members returned by the *new* corporators, duly elected.

2. Doug. 3.

3. Frazer 3.

Must be admitted
previous to vot-
ing.

5 G. III. c. 46.

Stamps.

To entitle a person to vote as a freeman or burgess, he ought to be regularly admitted to his freedom or burgessship in the corporation books, and the entry thereof stamped as directed by the 5 *Geo. III. c. 46. s. 1.* which recites that great frauds were committed in the several duties of one shilling respectively imposed (among other duties) on admissions into corporations and companies by the 5 and 6 William and Mary and the 9 and 10. Will. 3. owing to the duties being charged on the ad-

* After the decision of this cause, the court of king's bench, held that one Pasmore who had been elected mayor under the new charter was the legal mayor and that the *old* corporation was dissolved. *Rex v. Pasmore* 3 *Tem. Rep.* 199.

missions and not on the entries of the admissions in the court books, rolls or records of the corporations or companies; it therefore repeals the former duties and enacts by

Sect. 2. "That from and after the said fifth day of July 1765, in lieu thereof the duty hereinafter mentioned be charged, imposed, and paid throughout the kingdom of England, dominion of Wales, and town of Berwick upon Tweed, that is to say,

"For and upon every skin or piece of vellum or parchment, and for every sheet or piece of paper, upon which shall be engrossed, written or printed in the court book, roll or record of any corporation or company, any entry, minute, or memorandum, of any admission into any corporation or company the sum of two shillings."*

Upon entry into the court-book of every admission a duty of 2s. [and by the 23 G. III. c. 58. an additional 2s.] to be paid.

"And if any town-clerk, or other proper officer, shall neglect or refuse to make such entry, minute or memorandum of such admission, upon the proper duty, in the court-book, or on the roll or record of any corporation or company, within one month after any person shall be admitted into the same, he shall for every such offence, forfeit the sum of ten pounds."

Officers neglecting or refusing for one month to make such entry forfeit 20l.

Several voters were objected to in the Cardigan 3 Doug. 183.
on the three following grounds:

* And by the 23d Geo. III. c. 58. an additional duty of two shillings is imposed upon admissions.

1. That

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1. That the admissions of a certain number were entered on stamps *during* the poll. 2. That the admissions of others were entered on stamps *after* the election, and 3 others within a year of the election.

3. Doug. 207.

As to the first class, who were objected to principally on a supposed irregularity in the entries on stamps which were made during the poll, the committee resolved, "That the voters whose admissions were stamped *during* the poll *prior* to their voting, are to be admitted as legal voters at this election."

Ibid 208.

As to the second, "That persons whose admissions were stamped *after* their votes were given, were not to be allowed as legal voters at the last election."

Ibid 215.

As to the third, who were objected to as falling within the disqualification by the Durham act [3 Geo. III. c. 15. s. 1.], which directs that no person claiming as a freeman to vote at any election shall be admitted to give his vote, "unless such person *shall have been admitted* to the freedom of such city, town or borough twelve calendar months before the first day of such election;" but this is not to extend any person entitled to his freedom by birth, marriage or servitude. It was contended that the *admission* meant by the statute is the admission upon stamps. That till such admission on stamps, the party is to be considered as having only an inchoate right to his

his freedom, not as being a complete freeman. On the other side it was answered, that when a burgess is elected or *presented*, and then sworn in, his right is complete. That the swearing in is the sort of admission meant by the statute. The committee resolved, " That it is not necessary by the statute of 3 *Geo. III.* for freemen whose right in every other respect is complete a year before an election, to have their admissions entered on stamps 12 calendar months before, in order to qualify them to vote at such election."

But where by the custom of the place, the persons entitled to their freedom, are not required to be admitted in form, it seems that a stamped admission is not necessary. As in the Sudbury case, the last determination of the right of election " is only in the sons of freemen, born after their fathers were *made free*, and in such as have served *seven years* apprenticeship, or are made freemen by *redemption*." At the opening of the case before the committee, the counsel for the petitioners contended that the above resolution was merely explanatory of the following, viz. " That the sons of freemen born after their fathers were *made free*, and those that have served apprenticeships in the borough of Sudbury in the county of Suffolk, have a right to vote in the election of members to serve in parliament for the said borough, *without*

When admission
not necessary.

2 Doug. 132.

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without any admission in form to their freedom, or taking the oath of freemen.”—It appeared that a great number of persons who tendered their suffrages for the petitioners at the election, were rejected, because they did not produce evidence of their admissions to their freedom, enrolled upon stamps in the books of the corporation. From the ultimate decision of the committee in favour of the petitioners, Mr. Douglas observes, it necessarily required the committee to be of opinion; “That persons who derived their claim to their freedom from the antecedent title of birth, who had exercised all the rights of freemen, and that of voting for members of parliament among the rest for 20 years and upwards * before the last election, who had demanded to be enrolled (and offered to prove that at their birth, their fathers exercised and enjoyed the rights and franchises of freemen) but were refused, had a right to vote, though they could not produce evidence of their admissions enrolled upon stamps.”

Proceeding to obtain admissions.

32 G. III. c. 21.

The 12 Geo. III. c. 21. recites, “Whereas divers persons who have a right to be admitted citizens, burgesses, or freemen, of divers cities, towns corporate, boroughs, cinque-ports, and

* When Mr. Douglas published his reports, the time limited for application to the court of King's Bench, for leave to exhibit informations in the nature of *quo warranto* against corporators, was 20 years; but it is since abridged to 6 years by the 52 Geo. III. c. 58.

places, within that part of Great Britain called England and Wales, being refused to be admitted thereto, have, in many cases no other ordinary remedy to procure themselves to be admitted to the franchises of being citizens, burgesses, or freemen, than by writs of *mandamus*, the proceedings on which are very dilatory and expensive; and although any such writ of *mandamus* is obeyed, the person applying is nevertheless put to great and unnecessary trouble, delay, and expence; and whereas by the laws now in being, in many cases, no provision is made for giving costs to the party suing out any such writ where the same is obeyed: For remedy whereof it enacts.

“ That where any person shall be entitled to be admitted a citizen, burgess, or freemen, of any such city, town corporate, borough, cinque-port, or place, and shall apply to the mayor, or other person, officer, or officers, in such city, town corporate, borough, cinque-port, or place, who hath or have authority to admit citizens, burgesses, and freemen therein, to be admitted a citizen, burgess, or freeman thereof; and shall give notice, specifying the nature of his claim, to such mayor, or other officer or officers, that if he or they shall not so admit such person a citizen, burgess, or freeman, within one month from the time of such notice, the court of king's bench will be applied to for a writ of *mandamus*, to

Any person entitled to be admitted a citizen, &c. of any city, and applying to the mayor, &c. for that purpose,

giving him notice, specifying the nature of his claim, &c.

Q

compel

If such mayor, &c. shall refuse to admit such person, and a *mandamus* shall issue, for compelling his admission,

the mayor to pay all costs.

Freemen to be admitted to inspect the entries of admission, &c. and to take copies thereof.

compel such admission; and if such mayor, or other officer or officers, shall, after such notice, refuse or neglect to admit such person, and a writ of *mandamus* shall afterwards issue to compel such mayor, or other officer or officers, to make such admission, and, in obedience to such writ, such persons shall be admitted by the said mayor, or other officer or officers, a citizen, burgess, or freeman of such city, town corporate, borough, cinque-port, or place, then such person shall (unless the court shall see just cause to the contrary) obtain and receive from the said mayor, or other officer or officers, so neglecting or refusing as aforesaid, all the costs to which he shall have been put in applying for obtaining and serving such writ of *mandamus*, and enforcing the same, by a rule to be made by the court out of which such writ shall issue, for the payment thereof, together with the costs of applying for, obtaining, serving, and enforcing the said rule; and if the rule so to be made shall not be obeyed, then the same shall be enforced in such manner as other rules made by the said court, are or may be enforced by law."

2. "In order that it may be known what persons are, from time to time, admitted freemen or burgesses of any city, corporation, borough, or cinque-port." The mayor, bailiff, town clerk, or other officer of any city, corporation, borough, or cinque-port, having the custody

tody of, or power over, the records of the same, shall, upon the demand of any two freemen or burgeses, permit such freemen or burgeses, and their agent or agents, at any time whatsoever, between the hours of nine in the morning and three in the afternoon, to inspect the entries of admission of freemen, burgeses, or other inferior corporators, and to take copies or extracts therefrom, paying for every such inspection two shillings and six-pence; and for every such copy or extract, not exceeding seventy-two words, the sum of four-pence; and so in proportion for all such copies or extracts: and if any mayor, bailiff, town clerk, or other officer, shall refuse or deny the inspection of any such entries, or to give copies or extracts thereof, as before directed, he or they shall, for every such denial or refusal, forfeit and pay the sum of one hundred pounds to any person who shall sue for the same; to be recovered, with full costs of suit, by action of debt, in any of his majesty's courts of record at Westminster; in which action, it shall be sufficient for the plaintiff to alledge in his declaration, that the defendant or defendants is or are indebted to the said plaintiff in the sum of one hundred pounds for money had and received to his use.—Provided that such action, shall be commenced within the space of one year after the cause of it shall have arisen, and not afterwards."

Mayor, bailiff, &c. denying inspection of such entries, or to give copies thereof, shall, for every refusal, forfeit 100l.

To be recovered by action of debt.

To be commenced within one year after the cause shall have arisen.

Persons having
inchoate rights to
be admitted.

3 G. III. c. 15.

Although the regular mode of compelling admission into any corporate body is by application to the court of king's bench for a writ of *mandamus*; yet the proceedings on those writs are dilatory, and it often happens, that persons having inchoate rights to their freedom by birth, marriage, servitude, &c. (and not within the Durham act) either delay applying for their admissions, or become entitled to demand them, when it is impossible according to the ordinary proceedings of the court to obtain those writs before the election. In these cases, where it is proved—that such persons tendered their votes at the election *;—that due application was made to be admitted †—and that the voters are possessed of those qualifications entitling them to admission; committees will allow them to be added to the poll:

1 Frazer 166.

As, in the case of Oakhampton. Robert Ford had been allowed to vote, but was objected to as not having been admitted till after the election: He applied to be admitted as the eldest born son of his father on a Sunday, which was the day before the election. In support of the objection, it was said, that the mayor was not bound to hold a court on Sunday, and that

* This proof must be adduced, before evidence can be entered into, to establish a vote. Gloster 30. Vide "Evidence."

† This must be done, before evidence is allowed as to the right of the voter to his freedom. 1 Frazer. 167.

there

there was no opportunity of holding one on Monday, before the election commenced. The voter was not admitted till a week after the election; but the committee conceiving he had applied in proper time to be admitted, allowed his vote to stand good.

Another voter of the name of Bezel applied to the mayor to be admitted on the Saturday, just after the court had been held. He died soon after the election, without being admitted, yet the committee held his vote good.

1. Frazer. 167.

So, in the Derby case, the principle above mentioned as to the right of persons to be on the poll who had duly applied to be admitted and tendered their votes, was admitted by the counsel on both sides, but there the question was, whether the admissions had been demanded of the proper persons, or in a proper manner, which depended on the legality of a bye-law of the corporation made in 1743, under which the disputed voters had acted. The committee, by deciding that these voters ought to be added to the poll, held the bye-law to be a good one.

3 Doug. 300.

And where it happens that a *mandamus* has been applied for, but is depending at the election, and decided in favour of the voter before the committee are appointed; even under such circumstances, if the voter tendered his vote at the election, the committee will not suf-

fer it to be lost to the person in whose favour he tendered it :

3 Doug. 464.

As in the case of Shrewsbury, where it was admitted, that if certain persons, who had duly applied to be admitted a year before the election, as having inchoate rights to their freedom, under two immemorial customs, and had tendered their votes for the petitioner were to be allowed, the petitioner would have a majority.—The two customs had been established by verdicts under two *mandamuses* ; but these verdicts the counsel for the sitting member contended (in order to let in other evidence which they alleged had since been discovered, and would overturn the customs) were only conclusive between the parties ; and that the existence of the customs was still open to the discussion of the committee. The committee however considered them as conclusive evidence of the customs, and by determining the petitioner to be duly elected, allowed the votes of those persons who claimed under them.—It appeared that the second *mandamus* was depending in the court of King's Bench at the election, from which circumstance the sitting member's counsel contended, that as the title of those men to their freedom, was in suspense and under litigation in Westminster-hall, when their votes were rejected, they could not be of any avail as to that election. But the committee must have thought otherwise by determining

termining the petitioner to have the majority of votes.

It seems from the decision in the Bristol case, that a freeman may vote tho' he is admitted to his freedom after the teste of the writ. In that case one of the questions made was, "Whether persons admitted to the freedom of the city, after the date and issuing of the writ for an election of members of parliament for that city, have a right to vote at such election?" But the committee came to no express resolution on that question; though it was admitted on both sides, that if the voters who were admitted to their freedom after the teste of the writ, ought to be struck off, the petitioner would have a clear majority over Mr. Burke, one of the sitting members, and *vice versa*. The committee, notwithstanding the voters were objected to, determined Mr. Burke duly elected. Which decision, Mr. Douglas remarks, will, probably, establish the general validity of votes, to which the only objection is, that the admissions were after the teste of the writ.

Admissions after the teste of the writ.

1 Doug. 245.
260.

Ibid. 282.

The constitution of some corporations admits of freemen and burghesses being made, either by purchase or favour, without having any antecedent titles. Those admitted by favour are called honorary freemen and burghesses. In a variety of places the persons admitted either by purchase or favour, have the right of voting for

Honorary free-
men, &c.

2 Doug. 81.
3 Lud. 507.

29 Journ. 332.

Occasional freemen.

3 G. III. c. 15.

None to vote as freemen who have not been admitted 12 months.

members of parliament. However in some degree to check that privilege, which had been greatly abused in Durham, the 3 Geo. III. c. 15. * (called the Durham act) enacts, That no person claiming as a freeman to vote at any election as a freeman only, 'shall be admitted to vote unless admitted to the freedom of the place twelve kalendar months before the first day of such election. And any person voting contrary to that act forfeits one hundred pounds, and his vote is void.

Exceptions.

By the 2d section. This act is not to extend to any person entitled to his freedom by birth, marriage, or servitude.

Penalty on antedating admissions.

3d. Any officer of any corporation, or other person, wilfully antedating any admission, forfeits five hundred pounds.

Any candidate, or his agent, or any two freemen, may inspect the books and papers of admissions.

4th. Officers of corporations, upon the demand of a candidate or his agent, or any two freemen, at any time before, and within one month after any election, are to permit them to inspect, and have copies or minutes of the admission of so many freemen, as they think fit. And the books and papers wherein the admissions are entered, if demanded, are to be produced at every election. Such officers refusing the inspection of the books and papers; or

* This act being directed to be read by the returning officer, at every election, where the right of voting is in the whole, or in part in freemen; the whole of it is given in the appendix.

copies

copies or minutes thereof; or to produce them at elections, forfeit one hundred pounds.

5th. The mode of proceeding to recover penalties is pointed out. And by the 6th section, proceedings must be commenced within one year after the penalties are incurred.

Penalties how to be recovered.

7th. The returning officer is directed to read this act, at every election, where the right is in the whole, or in part in freemen, immediately after reading the 2 Geo. II. c. 24. for preventing bribery.

This act to be read at all elections by freemen.

8th. This act is not to extend to London, or Norwich.

Not to extend to London or Norwich.

In the case of Bedford, several voters were objected to, as being *occasional*, though made a year before the election. In support of the objection it was argued, That the above act did not take away, the common law disqualification, as to occasional freemen, of longer standing than a year; that previous to this statute, there was no limitation in point of time with regard to occasional freemen, but if a man acquired his freedom merely for the purpose of voting at an election, although more than a year before, his vote was void. In answer it was admitted, that these voters were made free for the purpose of voting at the election for that place, but that the statute had drawn the line, when occasionality should attach. The chairman said (though not in the formal words of a resolution), " That
the

2 Doug. 87.

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the committee were clear in their opinion, that the objection of occasionality did not lie against freemen made above a year before the election."

Residence of
freemen and bur-
gesses.

Since the 14 *Geo. III. c. 58.* which repealed the several statutes requiring voters to be resident in the counties, boroughs, and other places to entitle them to vote; residence depends on custom only. On this subject the following cases have arisen before committees :

1 Doug. 317.

10 Joorn. 469.

New Radnor—The only question here was on the sense of the last determination, which is in these words, "That the right of election, &c. is in the *burgesses* of Radnor, Raydor, Knighton, Knuclas and Kevenlice only."—The counsel for the petitioners insisted, that by the word "*burgesses*," is meant all *burgesses*, whether resident or non-resident; and that by the standing order of 1735, (*infra* p. 384.) the counsel for the sitting member were not at liberty to go into any proof of the contrary. On the other side it was contended, that by the standing order the house could never intend to prohibit the explanation of ambiguous or equivocal words in last determinations, and said they only proposed to explain the words "*burgesses*" in the determination, and to shew that the house must have understood by it, in this instance not "*burgesses* at large," but "*burgesses* inhabitants."—The committee were of opinion that they were not precluded

precluded from such explanation; but afterwards, by determining that the petitioner was duly elected, established the extended sense of the word "burgesses," as insisted on by the counsel for the petitioners.

So, in the case of Bedford, the last determination of the right of election is as follows: 12th of April 1690. "That the right of election, &c. is in the burgesses, freemen, and inhabitants being householders of Bedford, not receiving alms." It was contended that the expression "*being householders of Bedford*," was to be applied as well to *burgesses and freemen*, as to inhabitants, or in other words, that *non-resident burgesses and freemen* had no right to vote. But the committee were of opinion, "That the words, "*being householders of Bedford*" contained in the resolution of the house of commons of the 12th of April 1690, do not refer to the *burgesses and freemen*, but to the *inhabitants only*." 2 Doug. 70.

In the two cases of Lyme, it was insisted that freeholders and freemen *resident* in the borough, and they only, had a right to vote. There was no last determination on the right of election; but a great variety of evidence both written and oral, such as charters, court-rolls, returns, &c. and the testimony of old men, as to the usage, was adduced on both sides and after the cause had been ably argued and fully gone Philipps 327.
2 Lud. 3.

2. Lud. 94.

gone into, both the committees determined the right to be in the freemen only, as well non-resident as resident.

3 Lud. 221.

In the case of Preston in 1785, the only question was, whether the right of voting was in the "in-burgessees, of the borough, inhabiting within the same," or in "all the inhabitants." It was understood, that if the right was not in the latter, the sitting members would fail in supporting their return. It appeared from the journals, that in 1661. "Serjant Charlton

3 Journ. 336.

made report from the committee of privileges and elections, That upon the petition of Dr. Fife against Dr. Rishton they had proceeded to examine the matter touching their elections for the borough of Preston. And the question being, whether the mayor and twenty four burgessees had only voices, or the inhabitants at large; the committee was of opinion, That all the inhabitants had voices in the election. And that a majority of such voices was with Dr. Rishton: and that the said Dr. Rishton was duly elected a burgesse for the said borough, and ought to sit in this house." Before a select committee in 1781, it was proposed to shew, that by the words "*all the inhabitants*" in the last resolution, were meant, "*all the in-burgessees resident*, and no other persons." But that committee resolved, "That the words *all the inhabitants* in the last determination of the house of the 18th of December 1661,

do

do not mean the in-burgessees *inhabitants* only :” and they also resolved that the above resolution in 1661, was a last determination within the 2 *Geo. II. c. 24. f. 4.* The committee in the last case in 1785, determined the sitting members duly elected.

The statute of 9 *Ann. c. 20. f. 4.* vested in the court of King’s Bench (which is the only tribunal for the direct trial of corporate rights *) a *discretionary* power of giving leave to exhibit informations in the nature of *quo warranto*; and that court some years back, made a rule, not to grant such informations against any corporator, who had been in possession of his franchise twenty years, or upwards. That period however was afterwards abridged by the court to six years; but as the rule of limitation, extended only to applications made on behalf of private persons, and was not binding on such as might be made by the attorney general on behalf of the crown, it was enacted by the 32 *Geo. III. c. 58. f. 1.*

Limitation for proceeding to remove freemen and burgessees, &c.

4 Bur. 1962,
2022, 2120.

4 Term. Rep.
282.

32 G. III. c. 58.

“ That it shall and may be lawful for the defendant or defendants to any information in the nature of *quo warranto*, for the exercise of any office or franchise in any city, borough, or town corporate, whether exhibited with leave of the

Defendants to information in the nature of *quo warranto* may plead the holding it for 6 years or more.

* The committees in the cases of Bedford (2 *Doug.* 81. and 3 *Doug.* 145.) and Sudbury (*Philipp.* 189.) went into the right of freemen to their freedom, although they had been in possession long enough for *quo warranto*’s to have been brought against them.

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court, or by his majesty's attorney general, or other officer of the crown on behalf of his majesty, by virtue of any royal prerogative or otherwise, and each and every of them severally and respectively, to plead that he or they had first actually taken upon themselves, or held or executed the office or franchise which is the subject of such information, six years or more before the exhibiting of such information, such six years to be reckoned and computed from the day on which such defendant so pleading was actually admitted and sworn into such office or franchise; which plea shall and may be pleaded either singly, or together with and besides such plea as he or they might have lawfully pleaded before the passing of this act, or such several pleas as the court on motion shall allow, and if, upon the trial of such information, the issue joined upon the plea aforesaid shall be found for the defendant or defendants, or any of them, he or they shall be entitled to judgment, and to such and the like costs as he or they would by law have been entitled to, if a verdict and judgment had been given for him or them upon the merits of his or their title."

Forfeiture of office within 6 years before information, may be replied to such plea.

2. Provided, "That in every such case the prosecutor of such information may reply to such plea, any forfeiture, surrender, or avoidance, by the defendant of such office or franchise happening within six years before the exhibition of such information,

information, whereon the defendant may take issue, and shall be entitled to costs in manner aforesaid."

3. "That if any person or persons against whom any such information as aforesaid shall be exhibited, shall derive title under an election, nomination, swearing into office, or admission by any person or persons, the title of such person or persons against whom such information shall be exhibited, shall not be defeated or affected by reason, or on account of any defect in the title of such person or persons so electing, nominating, swearing into office or admitting, in case such person or persons under whom title shall be derived as aforesaid, was or were in exercise *de facto* of the franchise or office (in virtue of which he or they so elected, nominated, sworn in or admitted) at a period six years at least previous to the time of filing such information, and his or their title shall not have been questioned by any legal proceedings carried on with effect."

Title derived under an election not to be affected on account of defect in the title of the person electing, if he was in the exercise of his office 6 years previous to the information.

4. "That the mayor, bailiff, sheriff, town-clerk, or other officer of any corporation, having the custody of, or power over the records of the same, shall upon the demand of any person, being an officer or member of such corporation, on the payment of one shilling, permit such person, on any day or days except Christmas-day, Good-friday and Sunday between the hours of nine in the morning and three in the afternoon, to inspect

Officer having the custody of the corporation records to permit any member thereof to inspect the book of admission of freemen, &c. on penalty of 100l.

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spect the books and papers wherein the admission or swearing-in of the freemen, burgeses, or other members or officers of such corporation, shall be entered, and to have copies or minutes of the admission, or the entry of swearing in of any one or more of such freemen, burgeses, or other members or officers upon paying six pence for every one hundred words for writing."—Officers offending forfeit one hundred pounds, with full costs, to him, her, or them, who shall inform and sue for the same within one year.

IV. *Of electors as inhabitants.*

By electors as *inhabitants*, are not meant every dweller in the place; for in addition to their being inhabitants, it is necessary for them to be, 1. "*inhabitants householders*"; or 2. "*inhabitants, paying scot and lot.*" And in Peterborough the electors consist of both descriptions of inhabitants: Thus, by the last determination, the right of election is, "in the inhabitants within the precincts of the minster there, being householders not receiving alms, and in *other* the inhabitants within the said city paying scot and lot." It was contended, that to entitle a person to vote as an inhabitant within the city, though not within the precincts of the minster, it was necessary to be a householder. But the committee were of opinion, that the word "house-

"householders" related to the inhabitants within the precincts of the minster only. In some places, inhabitants of either of the above descriptions, must be "resiants". In others (as in Taunton, Ivelchester and Cirencester) they are to have "legal parochial settlements"; and by the *lex loci* of Taunton they are not to be certificate men.

1. "*Inhabitants householders*". It appears from Glanville (p. 142.) "That of *common right* all the inhabitants, householders, and residents in the borough ought to have voice in the election". And (p. 107.) "where there is no certain custom, nor prescription who should be electors, and who not, we must have recourse to common right, which to this purpose, was held to be—that all men, inhabitants, householders, resiants within the borough—ought to have voices in the election".—The entry in the Journals in the case of Cirencester (or Cicester) is in these words "Resolved, That where no custom, nor charter for election, there the inhabitants, householders, ought to make the election."

Inhabitants
householders.

1. Journ. 792.
2 Doug. 232.

The right of election for Cirencester, as delivered in by the counsel for the petitioner, and admitted by the other side, "is in the inhabitants householders legally settled: That inmates have no right to vote for the said borough, nor inhabitants of the Abbey and Emery, and Springate-lane." The committee in this case found

3 Frazer 447.

R

it

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Definition of a
householder.

2 Frazer 449.

it necessary, in order to save time, that the question, "What is a householder within the borough of Cirencester?" should be argued by the counsel and determined upon by them. And after argument it was resolved, "That it is the opinion of this committee, that no person can be deemed a householder who does not possess an exclusive right to the use of the outward door of the building, although by taking inmates he may have relinquished for a time the exercise of that exclusive right; neither can a person whose habitation is composed of more apartments than one be deemed a householder, unless he also possesses an exclusive right to the use of the staircase, doorway, or other passage that forms the means of communication between his several apartments, although by taking inmates he may have likewise relinquished for a time the exercise of that right."

"The original right to the exclusive use is then the point of discrimination between the householder, on the one hand, and the inmate on the other."

"The term *outward-door to the building*, does not include within its meaning, the gates or outward door of a court or passage open to the sky. A house may contain but a single apartment; yet it does not follow as a necessary conclusion that a single apartment, though furnished with a separate outward door, will constitute a house; for a shop or stall, unless it be used as a dwelling,

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is certainly not a house." They afterwards added:

"That it is the opinion of this committee, that the legal meaning of the terms *householders* and *inmates* must be determined on the general principles of the law of the land, not on any ideas suggested by local usage."

"That it is the opinion of this committee, that if a passage is considered as a street passage (though covered) all the houses that have separate outward doors opening into that passage are good votes."

In the same case it was held, that Robert Boyce, who was game-keeper to Lord Bathurst, by whom he was allowed a house rent free as part of his wages, and though the rates were paid by the voter, yet as they were allowed him by his lordship, his vote was decided to be bad. ^{2 Fraser, 452.}

So where Lord Bathurst's steward had a house free from taxes as part of his salary, his vote was held bad; though he said, if he was deprived of his office, he did not apprehend he should be obliged to quit without legal notice. ^{Ibid.}

2. "*Inhabitants paying scot and lot*," To be an inhabitant *paying scot and lot*, is now understood to mean a person who is rated and pays the parish taxes; or more properly a person who

Inhabitants paying scot and lot
Must be rated and pay the poor rates.

* The reader will find much useful information as to the meaning and application of the phrase "*paying scot and lot*" in the first vol. of Mr. Douglas's election cases, p. 140. and in the third vol. p. 126; and in the third vol. of Mr. Luders' cases p. 123.

ELECTORS FOR CITIES, TOWNS,

is *rated* and *pays* the poor rates; * for in all scot and lot boroughs, the poor rates are used, as the criterion for judging of persons paying scot and lot in those boroughs: From which circumstance, it may easily be conceived, by those who are not immediately acquainted with the proceedings of parties in different interests in scot and lot boroughs, that questions must continually arise and become the subject of litigation, as to the rateability of persons, either on the rates, or omitted to be rated at all; and as to the appointment of churchwardens and overseers, who, "or the greater part of them" are by the 43^d. of *Eliz.* the persons authorized to make the poor rates, with the consent of two justices dwelling in or near the parish or division for which the rate is made. But, as the justices in giving their allowance of these rates, act only in a *ministerial* capacity (on which account they may lawfully sit in judgment upon an appeal brought against a rate allowed by themselves) the legislature, "by reason of the unlimited power of the churchwardens and overseers of the poor, who frequently on frivolous pretences, and for private ends, make unjust and illegal rates in a secret and clandestine manner, contrary to the 43^d. of

Rex. v. Ju. of
Dorchester Stra.
393.

Rex v Uttox-
eter
Bott. 58.

* In Newark by the last determination, the right was in "the mayor, aldermen, and all the inhabitants, who pay, or *ought* to pay, scot and lot." 11th Jan. 1699. But the committee in 1791, from the evidence laid before them, resolved, that the right of voting for Newark, "is in the mayor, aldermen, and all the inhabitants *paying* scot and lot." 1. Frazer 314.

Eliz." found it necessary to enact by the 17. *Geo. II. c. 3.* that the churchwardens and overseers " shall give, or cause to be given public notice in the church, of every rate for the relief of the poor, allowed by the justices of the peace, the next Sunday after the same shall have been so allowed; and that no rate shall be esteemed, or reputed valid and sufficient, so as to collect and raise the same unless such notice shall have been given." And that every inhabitant should have liberty to inspect such rate, at all seasonable times, paying one shilling, and have copies delivered them, paying 6d. for every twenty four names, under a penalty of 20l. to the party grieved. And further by the 17. *Geo. II. c. 38.* 17 G. II. c. 38. §. 4. " In case any person or persons shall find him, her or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall from any material objection to any person or persons being put on, or left out of such rate or assessment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid, or any part thereof, or shall find him, her or themselves aggrieved by any neglect, act or thing, done or omitted by the churchwardens and overseers of the poor, or by any of his majesty's justices of the peace; it shall and may be lawful for such person or persons in any of the cases aforesaid, giving reasonable notice to the church-

ELECTORS FOR CITIES, TOWNS,

wardens or overseers of the poor of the parish, township or place, to appeal to the next general or quarter sessions of the peace for the county, riding, division, corporation or franchise where such parish, township, or place lies."

1. Doug. 125.

Rate made by
officers de facto.

Persons *rateable*, and having *paid* the rate, though that rate be made and collected by officers illegal or doubtful; may vote as inhabitants paying scot and lot—This was determined by the committee in the case of Milborne Port, where it appeared that since 1742, there had been struggles about the appointment of overseers of the poor. Several of the appointments had been quashed by the court of King's Bench, and two of two sets of overseers, which had been made by the different parties at the same time, viz. Easter 1774, were then before that court. Whereupon the committee proposed that the following question should be argued, viz. "Whether persons rateable and having paid the rate, though that rate were made and collected by officers illegal, or doubtful, may vote as inhabitants paying scot and lot?" and after hearing the arguments, they resolved that such persons had a right to vote.

Rate unappealed
against.

Where persons who are left out of a rate, and do not appeal against it, at the next quarter sessions, when there is sufficient time for that purpose, by which the rate becomes a valid one; yet if the parish officers have acted with misconduct

duct or criminal partiality, in such omission, and the voters are possessed of rateable property, the committee it seems, will allow the votes of persons though not upon the rates.—As in the case of St. Ives, where it was proposed to add 40 to the poll for the petitioning candidate, by proving that though they had not been rated, and had not paid, they possessed rateable property, and ought to have been rated, and were therefore entitled to vote. This was objected to, and in support of the objection it was said they ought to have appealed against the rate. It was answered that some of the persons in question could be shewn to have applied to be rated, and had been refused. That they did not appeal knowing it would be in vain, as a majority of the magistrates were in the interest of the sitting member, who was also one of the magistrates. The committee on being told, in answer to a question from them, that no evidence was intended to be brought, to prove misconduct or criminal partiality in the overseers, with regard to leaving any of the persons in question out of the rate, declared by their chairman, that they were of opinion, “ That persons of rateable property, not rated, and proving no misconduct against any persons in the management of the rate, to account for their not being rated, are not entitled to vote.”

2. Doug. 393.

3. Doug. 140.

Str. 1259. in point.

3. Doug. 46.

The committee in the first Seaford case, after hearing evidence respecting the *conduct* of the overseers and jurats as to making the rates, which the committee might have thought *misconduct* in them; received evidence as to the rateability of persons not upon the rates, although there had been time for an appeal; without any objection being made, either on the part of the sitting members, or by the committee.

3. Lud. 58.

Ibid 87.

But in the second Seaford case, the committee must have thought that sufficient ground of misconduct had not been laid, to entitle such evidence to be given. For there, the committee after hearing the evidence and arguments as to the rates resolved, "That the counsel for the petitioners might proceed upon the evidence of rateability—by proving first, that the rejected voters, had endeavoured, by due diligence to get on the rate." After this resolution the counsel for the petitioners produced evidence upon the vote of a person who had been rejected, but from the course they were taking the committee thought the counsel misunderstood their resolution; and after deliberation, they resolved: "That the counsel be permitted to argue, that it is not necessary that the rejected voters should have taken any steps to be put on the rates: Or if it is admitted by all parties, that some steps are necessary, that they be directed to argue what are the necessary steps." Whereupon the
counsel

counsel having argued the points the committee declared their opinion, "that the rejected voters have not used all due diligence on their parts, or complied with all the steps required by law, so as to entitle themselves to be put upon the rate. And therefore that the counsel for the petitioners be not now permitted to go into the question of rateability."

But proof of misconduct or criminal partiality must be adduced, before evidence is allowed to be gone into, as to the rateability of persons left out of the rate. This was fully established in the cases of Peterborough and Mitchell; and the committee in the former case thought, that proving a man to be rated up to the time of making the rate, in which he complained he was not rated; his still continuing in possession of the same property; his circumstances being the same; and that whilst rated he always paid the rates, was not sufficient proof of misconduct in the persons making the rates, to entitle the counsel to go into evidence of rateability.

Peterborough.
3. Doug. 63.
Mitchell.
1. Lud. 31.

The principle before-mentioned respecting persons not being on the rates, and neglecting to appeal to the sessions, where misconduct or criminal partiality can be proved, is equally applicable to persons who are on the rates—Thus, in the Milborne Port case, where persons were objected to as being improperly rated, when there had been sufficient time to appeal against the rate,
and

Phillips. 254.

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and no appeal had been brought, the chairman said that as they had no evidence to prove criminal partiality of the overseers, the committee had resolved not to admit evidence to shew that persons on the rate had not a rateable occupation.

The terms "burgesses," "commonalty,"* "potwallers," and "populacy," frequently occur in description of persons having the right to vote.

Burgesses.

1. Doug. 45.

2. Doug. 233.

Vol. I. p. 500.

Vol. II. p. 95.

Co. Litt. 108. b.
Bra. on bo. I.

Abingdon.

3. Journ. 42.

Aldboro' Yorksh
30. Journ. 418.

The word "burgesses," where it is not restrained by particular usage, as comprehending part of a corporation, or persons being burgage tenants, means "inhabitants of a borough," as appears from Sir H. Spelman in his glossary, title "*burgari et burgenfes*," where he defines them to be "*burgorum villarumque clausarum habitatores*." Whitelock in his commentary on the parliamentary writ, says, "burgesses are the inhabitants and freemen of boroughs;" and in another part of the same work he calls them, "inhabitants of towns or boroughs inclosed or fortified." And that the house so considered the word both in ancient charters and returns appears from the cases of Abingdon and Aldborough in Yorkshire.

* These terms are not here considered as applying to any part of a corporation, in which sense they are sometimes used.

"Com-

BOROUGHES AND CINQUE-PORTS.

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"Commonalty," may, by the particular constitution and corporate name of a place, signify a restricted number, but in its more proper and common acceptation, comprehends the whole body of the inhabitants. In the case of Bridport, the words "commonalty in general" were explained by the house to extend only to "inhabitants, householders paying scot and lot.

Commonalty.
Poole case.
2. Doug. 22.

29. Journ. 204.

In Taunton, where the right of election "is in the *inhabitants* within the said borough, being *potwallers*, and not receiving alms or charity," it was agreed before the committee, that a potwaller is a person who furnishes his own diet, whether he be a householder, or only a lodger,* but it is necessary that such potwaller have a legal parochial settlement † in the borough.

Pot-wallers.
1. Doug. 371.

"Populacy," in the case of Seaford, was explained by the house to mean "inhabitants housekeepers paying scot and lot." Yet in the case of Honiton, 3d Feb. 1710-11, the word "populace" is used, both by the parties and the committee, as different from "inhabitants, householders, paying scot and lot," and synonymous to "potwallers."

Populacy.
Seaford.
29. Journ. 89.
3. Doug. 29.
3. Lud. 37.
Honiton.
16. Journ. 479.

By the 26. Geo. III. c. 100. occasionality is fatal to all descriptions of inhabitants. The preamble

Occasional inhabitants.
26. G. III. c. 100.

* But it was said by the counsel in this case, that the journals of the house have recognized that apprentices, cannot be pot-wallers qualified to vote. 1. Doug. 371. sed qu.

† This is also required of voters at Ivelchester, 3. Doug. 154. and at Cirencester. 2. Frazer 447.

of

-ELECTORS FOR CITIES, TOWNS,

of that act recites : " Whereas it frequently happens, in cities and boroughs where the right of election of members to serve in parliament is in the inhabitants paying scot and lot, or in the inhabitants, householders, housekeepers, and potwallers, legally settled, or in the inhabitants, householders, housekeepers, and potwallers, or in the inhabitants householders, resiants or in the inhabitants within such cities or boroughs, that much trouble, expence, and litigation is created by occasional voters, to the great prejudice of the real inhabitants, who bear the burdens of such cities and boroughs, and to whom the right of sending members to parliament belongs." For remedy thereof it enacts, " That no person shall be admitted to vote at any election of a member or members to serve in parliament for any city or borough, of that part of Great Britain called England, or the dominion of Wales, as an inhabitant paying scot and lot, or as an inhabitant householder, housekeeper, and pot-waller, legally settled, or as an inhabitant householder, housekeeper, and pot-waller, or as an inhabitant householder resiant, or as an inhabitant of such city or borough, unless he shall have been actually and *bona fide* an inhabitant paying scot and lot, or an inhabitant householder, housekeeper, and pot-waller, legally settled, or an inhabitant householder, housekeeper, and pot-waller, or an inhabitant householder re-

siant,

Any person voting as an inhabitant, paying scot and lot, &c. who shall not have been six months previous to the election forfeits
201.

stant, or an inhabitant within such city or borough, six kalendar months previous to the day of the election at which he shall tender his vote; and if any person shall vote at any such election, contrary to the true intent and meaning of this act, his vote shall be deemed null and void, and he shall forfeit, to any person who shall sue for the same, the sum of twenty pounds to be recovered by him or her, by action of debt, in any of his majesty's courts of record at Westminster, wherein no essoin, protection, wager of law, privilege, or imparlance, shall be admitted or allowed; and in every such action the proof of inhabitancy, as aforesaid, shall lie upon the person against whom the same shall be brought: Provided nevertheless, That such action be commenced within six kalendar months after the cause of action accrued: Provided also, that nothing in this act contained shall extend, or be construed to extend, to any person acquiring the possession of any house, in any city or borough, by descent, devise, marriage, or marriage settlement, or promotion to any office or benefice."

but not to extend
to persons ac-
quiring posses-
sion by descent,
&c.

2. " That this act shall relate only to those persons who claim to exercise the franchise of voting as inhabitants paying scot and lot, or as inhabitants householders, housekeepers, and pot-wallers, legally settled, or as inhabitants householders, housekeepers and pot-wallers, or as inhabitants householders resiants, or as inhabitants
within

ELECTIONS FOR CITIES, TOWNS,

Nor to persons claiming a right to vote under any other description than inhabitants paying scot and lot, &c.

within such cities or boroughs, and shall not extend to any other description of persons who may claim to vote at any election for members to serve in parliament for such cities or boroughs, by any other title, or by any other superadded qualification."

MEMBERS.

M E M B E R S.

I. Of persons ineligible to be members.

II. Of the qualifications of members.

III. Of their privileges.

1. Of persons ineligible to be members.

It was formerly doubted, whether "minors" were ineligible to serve in parliament, but it is now finally settled by the 7 and 8 Will. III. c. 25; the eighth section whereof enacts, "That no person hereafter shall be capable of being elected a member to serve in this or any future parliament, who is not of the age of one and twenty years; and every election or return of any person under that age, is hereby declared to be null and void, and if any such minor hereafter chosen, shall presume to sit or vote in parliament, he shall incur such penalties and forfeitures, as if he had presumed to sit and vote in parliament without being chosen or returned."

Minors.

7 & 8 Will. III.
c. 25.

Cannot be elected.

Penalty on sitting or voting.

"Aliens" are incapable of being members by the law of parliament, and are expressly excluded from voting by a resolution of the house. (Supra p. 98.)

Aliens.

Com. Jour. 10.
Mar. 1623. 18
Feb. 1625.

"Denizens," and "naturalized aliens," are also ineligible by the 12 and 13 Will. III. c. 2. s. 3. which enacts, "That no person born out of the kingdom of England, Scotland, or Ireland,

Denizens and naturalized aliens.

12 & 13 W. III.
c. 2.

or

Cannot be mem-
bers of either
house.

or the dominions thereunto belonging, (although he be naturalized, or made a denizen, except such as are born of English parents) shall be capable of being of the privy counsel, or a member of either house of parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments from the crown, to himself, or to any other or others in trust for him."

Exception. 1 G.
1. st. 2. c. 4.

But the 1 *Geo. I. st. 2. c. 4. s. 1.* after reciting the last mentioned act, declares, "That it was not the intent and meaning of the said act, that the said clause, or any thing therein contained, should extend, nor shall the said clause be construed, adjudged or taken to extend to disable or incapacitate any person, who at or before his majesty's accession to the crown was naturalized, to be of the privy council, or a member of either house of parliament, or to take or enjoy any office or place of trust, either civil or military, or to take or have any grant of lands, tenements, or hereditaments from the crown to himself, or any other in trust for him."

No person natu-
ralized before
the accession of
Geo. I. incapa-
citated to be a
member, &c.

But no person to
be naturalized
unless in the bill
there be a disa-
bling clause in-
serted.

And the second section expressly enacts, "That no person shall hereafter be naturalized, unless in the bill exhibited for that purpose, there be a clause or particular words inserted to declare that such person shall not thereby be enabled to be of the privy council, or a member of either house of parliament, or to take any office or place

place of trust, either civil or military, or to have any grant of lands, tenements, or hereditaments from the crown, to himself or any other person in trust for him; and that no bill of naturalization shall hereafter be received in either house of parliament, unless such clause or words be first inserted or contained therein."

Nor any bill to be received without such clause.

No "papist" can sit or vote in either house of parliament since the 30 *Car. 2. st. 2. c. 1.** which directs the oaths of allegiance and supremacy to be taken, and the declaration against popery to be made and subscribed by every person previous to sitting or voting in either house.

Papists.

Persons attainted of treason or felony, are ineligible; as being unfit to sit anywhere.

Traitors and felons.

"Outlaws" in criminal prosecutions are also ineligible; but not in civil suits, as appears from several cases mentioned by Glanville.

4 Inst. 48 White-
locke of parl.
ch. 99. 100. 101.
Outlaws.

"Ideots," and "madmen" are ineligible, and persons "deaf and dumb" are said to be so.

Glanville, 126.
1 Bac. Ab. 576.
Hale Parl. 169.
Ideots, &c.

"Peers" are ineligible, because they form a separate branch of the legislature. None of the twelve judges can be members of the house of commons, because they sit in the lords' house, where they are summoned as assistants and attendants. Yet Thorp, a baron on the exchequer, was speaker to the commons in the reign of Henry the VI.†

Peers, Judges.

* Vide infra.

† But any who have judicial places in the court of wards, duchy court, or other courts ecclesiastical or civil are eligible. Bac. Abr. 576.

S

There

Clergy.

1 Bl. Com. 175.
4 Inst. 47. Moor
783. pl. 2083.
2 Lud. 269.

There are various resolutions in the journal declaring the clergy incapable of sitting in the house, as they sit in convocation. Yet in the Newport case, the committee determined a deacon to be duly elected.*

Sheriffs, Mayors and Bailiffs.

Bro. Abr. 1.
parl. 7. Com.
Journ. 25 June,
1604. 14 April
1614. 22 Mar.
1620. 2. 4. 15
June. 17 Nov.
1685. Hal. of
parl. 114. I
Bl. Com. 175.

1 Doug. 419.

4 Doug. 87.

Sheriffs of counties, and mayors and bailiffs of boroughs are ineligible in their respective jurisdictions, as being returning officers. The former are expressly incapacitated by the *nolumus* clause in the writ of summons, § which has made a part of it for about three centuries, and is in these words; "willing nevertheless, that neither you, nor any other sheriff of this our said kingdom be in any wise elected." And therefore in the case of Abingdon, Mr. Mayor being elected and returned for that borough, when he was high sheriff for the county of Berks, the committee resolved that he was not duly elected, and that the election was void. But where Mr. Fleming, at the time he was elected for the town of Southampton, which is a county of itself, was sheriff of Hampshire; the committee determined he was duly elected.

6 Jour. 725.

Mayors, bailiffs, or other persons, who are returning officers, are excluded by the two following resolutions of the house of the 2d of June, 1785. "No mayor can duly return himself a

* This case is very fully and ably reported by Mr. Luders, and well deserving the perusal of the reader.

§ Vide this will in the appendix.

burghs to serve in parliament for the same borough of which he is a mayor at the time of the election." "No mayor, bailiff, or other officer of the borough, who is a proper officer to whom the precept ought to be directed, is capable of being elected to serve in parliament for the same borough of which he is mayor, bailiff, or officer, at the time of the election."

A person who is elected to serve in the house of commons by the people, may by the law and custom of parliament, be disabled and incapable to sit as a member. This happens where a person has been found guilty of any crime which renders him infamous and the like.

Where a person has been found guilty of a breach of the treating act (7 Will. III. c. 4.) he labours under a temporary incapacity, as will be seen afterwards under title "Bribery."

Members returned upon double returns are incapable of sitting till the returns are determined by a committee, and there is a resolution of the house to this effect made at the commencement of every session.

Members who have taken their seats are ineligible for any other place, until they have vacated their former seats, but persons elected for one place, may, before they take their seats, be returned for any other place, in which case by an order of the house made at the commencement of every session, since 11 May, 1661; they are

Persons incapacitated by the house.

Whitl. of parl. c. 102. See Lord's Journ. 3. May 1620. 13 May 1624. 26 May 1725. Com Journ. 14 Feb. 1580. 21 June 1623. 9 Nov. 16. 21 Jan. 1640. 6 Mar. 1676. 6 Mar. 1711. 17 Feb. 1769.

Persons guilty of bribery.

Members on double returns.

Members who have taken their seats.

8 Journ. 247.

1 Doug. 169.

Farmers, collectors, &c. of the revenue.

5 W. & M. c. 7.
Salt, &c.

No members except commissioners of treasury and land tax, to be farmers, &c

to "make their election by this day three weeks [i. e. from the making of the order] for which of the places they will serve, provided there be no question upon the return for that place," when there is, the practice is, that the person who is returned for more than one place, shall make his election, as soon as his return which was controverted, is affirmed; but it does not appear that there is any rule fixing a particular day for that purpose.

By the 5th of Will. & Mary, c. 7.* intituled, "*An act for granting to their Majesties certain rates and duties upon salt, and upon beer, ale and other liquors, for securing certain recompences and advantages in the said act mentioned, to such persons as shall voluntarily advance the sum of £. 1,000,000 towards carrying on the war against France.*" it is provided by the 57th section, "That no member of the house of commons, shall at any time be concerned directly or indirectly, or any other in trust for him, in the farming, collecting, or managing any of the sums of money, duties, or other aids granted to their majesties by this act, or that hereafter shall be granted by any other act of parliament; except the commissioners of the treasury, and the officers and commissioners for managing the customs and excise, not ex-

* Members of the house may be members of the corporation erected pursuant to the 5th Will. & Mary, c. 20. Vide the 33d section of that Act.

ceeding the present number in each office, and those appointed to be commissioners for putting in execution an act, intituled, "An act for granting to their majesties an aid of four shillings in the pound for one year, for carrying on a vigorous war against France, as to their executing only the authority of the said act by which they are appointed commissioners."

11 & 12 Will. III. c. 2. s. 150. "No member of the house of commons in this present or any future parliament, during the time of his being a member of parliament, shall from and after the [said] twenty-fourth day of June, 1700, be capable of being a commissioner or farmer of the duty of excise upon beer, ale and other liquors, or of being a commissioner for determining appeals concerning the said duty, or controuling or auditing the account of the said duty, or of holding or enjoying in his own name, or in the name of any other person in trust for him, or for his use and benefit, or of executing by himself or his deputy any office, place, or employment, touching or concerning the farming, collecting, or managing the said duty of excise."

151. "If any member of the house of commons, in this present or any future parliament, during the time of his being a member of parliament, shall at any time after the said four and twentieth day of June, by himself or his deputy, or any other in trust for him, or for his benefit, take, enjoy, or execute, any office, place or employment,

Excise, &c

11 & 12 W. III. c. 2.

No member of parliament shall be a commissioner or farmer of the excise, or a commissioner of appeals, or comptroller, or auditor of the duty of excise.

Such persons incapable of sitting in the house of commons.

ployment, touching or concerning the farming, managing, or collecting the said duty of excise, or determining appeals concerning the said duty, or controuling or auditing the accounts of the same, such person is hereby declared and enacted to be absolutely incapable of sitting, voting, or acting as a member of the house of commons in such parliament."

Proviso.

But not to disable any present member, till after 24th June.

152. "Nothing herein-before contained shall extend, or be construed to extend (during the continuance of this parliament) to the disabling any person, at present a member of the house of commons, from being concerned in the managing, farming, or collecting the said duties of excise, or in determining appeals concerning the same, or in controuling or auditing the accounts thereof, so as such person shall not, after the said four and twentieth day of June, 1700, sit, vote, or act in the said house; any thing herein-before contained to the contrary notwithstanding."

Customs.

12 & 13 W. III.
c. 10.

No member to be a commissioner, &c. of customs.

By 12 and 13 Will. III. c. 10. s. 89. "No member of the house of commons shall be capable of being a commissioner or farmer of the customs, or of holding, or enjoying in his own name, or in the name of any other person in trust for him, or for his use or benefit, or of executing by himself or his deputy, any office, place, or employment, touching or concerning the farming, collecting, or managing the customs."

90. "If

90. "If any member of the house of commons shall during the time of his being a member of parliament, by himself or his deputy, or any other in trust for him, or for his benefit, take, enjoy, or execute any office, place or employment, touching, or concerning the farming, managing, or collecting the customs; such person is hereby declared and enacted to be absolutely incapable of sitting, voting, or acting as a member of the house of commons in such parliament."

Members executing office in customs, incapable of sitting.

"Of sitting, voting or acting." It was observed by the counsel in the Milborne Port case, that a person disqualified by this statute to sit and vote, *may* be elected, and if he were to resign after the election, might sit and vote; there being a clear distinction between this statute and the 6th of Anne, as the persons holding the offices specified in the latter, are not only declared to be incapable of *sitting*, but of being *elected*.

1. Doug. 132.

6. A. c. 7. f. 25.
29.

6. Anne c. 7. f. 25. "No person who shall have in his own name, or in the name of any person or persons in trust for him, or for his benefit, any new office or place of profit whatsoever under the crown, which at any time since the five and twentieth day of October, in the year of our Lord 1705, * have been created, erected, or hereafter shall be erected or created,

Persons holding officers or places of profit &c.

6. A. c. 7.

S 4

nor

* By the 15 Geo. II. c. 13. f. 8. "No person in respect of his being governor, deputy governor, director, manager, or member of the said company

Persons in office
&c. incapable of
being elected
members of the
house of com-
mons.

nor any person who shall be a commissioner, or sub-commissioner of prizes, secretary or receiver of the prizes, nor any comptroller of the accounts of the army, nor any commissioner of transports, nor any commissioner of the sick and wounded, nor any agent for any regiment, nor any commissioner for any wine licences, nor any governor or deputy governor of any of the plantations, nor any commissioners of the navy employed in any of the out ports, nor any person having any pension from the crown during pleasure, shall be capable of being elected, or of sitting or voting as a member of the house of commons, in any parliament hereafter summoned and holden." *

Accepting office
of profit while a
member, election
void, but may be
again elected.

26. " If any person being chosen a member of the house of commons, shall accept of any office of profit from the crown, during such time as he shall continue a member, his election shall be, and is hereby declared to be void, and a new writ shall issue for a new election, as if such person so accepting was naturally dead,

pany [of the Bank of England] or for having any stock or share therein, or for any matter or thing to be by him done or performed in the affairs of the said corporation," is thereby disabled, or incapacitated by the above act, from being a member of the house of commons.

* In the case Lanerk, Mr. Stuart held the office of joint king's remembrancer in the court of exchequer in Scotland, but previous to the election executed a resignation of the office, and caused it to be delivered to Mr. Cooper the secretary to the treasury. Although it did not appear to have been accepted, yet the committee held it sufficient to divest Mr. Stuart of the office. 2. Doug 367.

Provided

Provided nevertheless, That such person shall be capable of being again elected, as if his place had not become void as aforesaid."

27. "In order to prevent for the future too great a number of commissioners to be appointed or constituted for the executing of any office, that no greater number of commissioners shall be made or constituted for the execution of any office, than have been employed in the execution of such respective office at some time before the first day of this present parliament."

No office to be executed by too many commissioners.

28. "Nothing herein contained shall extend or be construed to extend to any member of the house of commons, being an officer in her majesty's navy or army, who shall receive any new or other commission in the navy or army respectively."

Not to extend to officers in the navy or army.

29. "If any person hereby disabled or declared to be incapable to sit or vote in any parliament hereafter to be holden, shall nevertheless be returned as a member to serve for any county, stewartry, city, town, or cinque port, in any such parliament, such election and return are hereby enacted and declared to be void to all intents and purposes whatsoever; and if any person disabled, or declared incapable by this act to be elected, shall, after the dissolution or determination of this present parliament, presume to sit or vote as a member of the house of commons in any parliament to be hereafter summoned,

Persons disabled, if returned as members, such election and return void.

Penalty on sitting.

moned; such person so sitting or voting shall forfeit the sum of 500*l.* to be recovered by such person as shall sue for the same in England," in the manner therein mentioned.

30. "Every person disabled to be elected, or to sit or vote in the house of commons of any parliament of England, shall be disabled to be elected, or to sit or vote in the house of commons of any parliament of Great Britain."

Pensioners.

3. G. 1. st. 2.
c. 56.

No person having a pension from the crown shall be capable of being elected, &c. a member of the house of commons.

Any person having such pension, and who being elected shall sit in the house, shall forfeit 20*l.* *per diem* to the prosecutor.

1st. *Geo. I. st. 2. c. 56.* after reciting the 6. *Anne, c. 7.* and to the end "that the provision intended by that law, for securing the honour of the house of commons, may not in future times be defeated or eluded by any person, who shall be a member of the house of commons accepting any pension for any term or number of years;" it enacts, "That no person, having any pension from the crown for any term or number of years, either in his own name, or in the name or names of any other person or persons in trust for him, or for his benefit, shall be capable of being elected or chosen a member of, or of sitting or voting as a member of this present or any future house of commons, which shall be hereafter summoned."

2. "If any person who shall have such pension as aforesaid, at the time of his being so elected, or at any time after, during such time as he shall continue or be a member of the house of commons, shall presume to sit or vote in that house,

house, then and in such case, he shall forfeit twenty pounds for every day in which he shall so sit or vote in the said house of commons, to such person or persons who shall sue for the same," in the manner therein mentioned.

15. *Geo. II. c. 22.* "No person who shall be commissioner of the revenue in Ireland, or commissioners of the navy or victualling offices, nor any deputies or clerks in any of the said offices, or in any of the several offices following; that is to say, the office of lord high treasurer, or the commissioners of the treasury, or of the auditor of the receipt of his majesty's exchequer, or of the tellers of the exchequer, or of the chancellor of the exchequer, or of the lord high admiral, or the commissioners of the admiralty, or of the paymasters of the army or of the navy, or of his majesty's principal secretaries of state, or of the commissioners of the salt, or of the commissioners of the stamps, or of the commissioners of appeals, or of the commissioners of wine licences, or of the commissioners of hackney coaches, or of the commissioners of hawkers and pedlers, nor any persons having any office, civil or military, within the island of Minorca or in Gibraltar, other than officers having commissions in any regiment there only, shall be capable of being elected, or of sitting or voting as a member of the house of commons in any parliament which shall be hereafter summoned and holden."

Placemen.

15. G. II. c. 22.

Description of
officers not ad-
mitted to sit in
parliament.

2. "If

Returns of such
members de-
clared void.

Penalty on per-
sons sitting or
voting, after
disabled by this
act.

Persons except-
ed.

2. " If any person hereby disabled or declared to be incapable to sit or vote in any parliament hereafter to be holden, shall nevertheless be returned as a member to serve for any county, stewartry, city, borough, town, cinque port, or place, in parliament, such election and return are hereby enacted and declared to be void to all intents and purposes whatsoever; and if any person disabled and declared incapable by this act to be elected, shall after the dissolution, or other determination of this present parliament, presume to sit or vote as a member of the house of commons in any parliament to be hereafter summoned, such person so sitting or voting, shall forfeit the sum of twenty pounds for every day in which he shall sit or vote in the said house of commons, to such person or persons who shall sue for the same," in the manner therein mentioned,—“ and shall from thenceforth be incapable of taking, holding, or enjoying any office of honour or profit under his majesty, his heirs or successors.

3. " Nothing in this act shall extend or be construed to extend or relate to, or exclude the treasurer or comptroller of the navy, the secretaries of the treasury, the secretary to the chancellor of the exchequer, or secretaries of the admiralty, the under secretary to any of his majesty's principal secretaries of state, or the deputy paymaster of the army, or to exclude any person

person having or holding any office or employment for life, or for so long as he shall behave himself well in his office; any thing herein contained to the contrary notwithstanding."

"For further securing the freedom and independence of parliament," the 22*d.* Geo. III. c. 45. *f.* 1. enacts, "That any person who shall directly or indirectly, himself or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold or enjoy, in the whole or in part, any contract, agreement or commission, made or entered into with, under or from the commissioners of his majesty's treasury, or of the navy or victualling office, or with the master general or board of ordnance, or with any one or more of such commissioners, or with any other person or persons whatsoever, for or on account of the public service; or shall knowingly and willingly furnish or provide, in pursuance of any such agreement, contract or commission which he or they shall have made or entered into as aforesaid, any money to be remitted abroad, or any wares or merchandize to be used or employed in the service of the public, shall be incapable of being elected, or of sitting or voting as a member of the house of commons, during the time that he shall execute, hold, or enjoy, any such contract, agreement, or commission,

or

Contractors.

22 G. III. c. 45.
All persons holding contracts for the public service incapable of being elected or sitting.

or any part or share thereof, or any benefit or emolument arising from the same."

Any member accepting a contract, his seat shall be void.

2. "If any person, being a member of the house of commons, shall directly or indirectly, himself, or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, enter into, accept of, agree for, undertake, or execute, in the whole or in part, any such contract, agreement, or commission, as aforesaid."—"the seat of every such person in the house of commons shall be, and is hereby declared to be void."

Not to extend to incorporated trading Companies.

3. "Nothing herein contained shall extend, or be construed to extend, to any contract, agreement, or commission made, entered into, or accepted, by any incorporated trading company in its corporate capacity, nor to any company now existing or established and consisting of more than ten persons, where such contract, agreement, or commission, shall be made, entered into, or accepted, for the general benefit of such incorporation or company."

If any person herein disqualified shall be elected, such election shall be void.

"* 9. If any person hereby disabled, or declared to be incapable to sit or vote in parliament, shall nevertheless be returned as a member to serve for any county, stewartry, city, borough, town, cinque port, or place, in parliament, such election and return are hereby enacted and declared

* The intervening clauses of this act, relate only to contracts existing at the time this act passed.

to be void; and if any person, disabled and declared incapable by this act to be elected, shall, after the end of this present session of parliament, presume to sit or vote as a member of the house of commons, such person so sitting or voting shall forfeit the sum of five hundred pounds, for every day in which he shall sit or vote in the said house, to any person or persons who shall sue for the same," in the manner therein mentioned—
 & every person, against whom any such penalty or forfeiture shall be recovered by virtue of this act, shall be from thenceforth incapable of taking or holding any contract, agreement, or commission, for the public service, or any share thereof, or any benefit or emolument from the same, in any manner whatsoever."

Disabled persons who shall sit in the house of commons after this session, shall forfeit 500l. for each day.

10. "In every such contract, agreement, or commission, to be made, entered into, or accepted, as aforesaid; there shall be inserted an express condition, that no member of the house of commons be admitted to any share or part of such contract, agreement, or commission, or to any benefit to arise therefrom; and that in case any person or persons who hath or have entered into or accepted, or who shall enter into or accept, any such contract, agreement, or commission, shall admit any member or members of the house of commons to any part or share thereof, or to receive any benefit thereby, all and every such person and persons, shall for every such offence, forfeit and

A condition to be inserted in all public contracts, that no member of the house of commons shall have any share thereof.

Penalty on contractors who shall admit any member of the house of commons to any share of their contracts.

pay

pay the sum of five hundred pounds," to be recovered with full costs, in the manner therein mentioned.

Remission of
actions.

11. Prosecutions to be commenced within twelve calendar months*.

II. *Of the qualifications of members.* †

Residence with-
the county for-
merly necessary.

It was required by the 1 Hen. 5. c. 1. that knights of the shire should not be chosen unless resident

* Mr. Hatfel, in the second volume of his valuable collection of precedents in the house of commons, (p. 33.) gives a variety of cases that have arisen in the house, on the disabilities created by the foregoing statutes, which with the notes and observations thereon, contain much useful and interesting information on this branch of parliamentary law.

† It may be worthy of notice, that a person may be chosen and returned without and even against his consent. This appears from the case of Gloucestershire in 1624, mentioned by Glanville (p. 101.) where Sir Thomas Estcourt desired not to be elected, but the majority being in his favour he was returned. One of the questions in that case was, "whether Sir Thomas Estcourt was eligible against his own consent, and contrary to his desire; and it was held clearly that he was; and that no man being lawfully chosen can refuse the place; for the county and commonwealth have such an interest in every man, that when, by lawful election, he is appointed to this public service, he cannot by any unwillingness, or refusal of his own, make himself incapable; for that were to prefer the will, or contentment, of a private man, before the desire and satisfaction of the whole country, and a ready way to put by the sufficientest men, who are commonly those, who least endeavour to obtain the place." The case of Bristol in 1661, is another instance of the same sort. 1 Doug. 281.

But there is no great probability that this will happen in our days; if it should, such person might, since the statutes of 9 Ann. c. 5, and 33 Geo. 2. c. 20. vacate his seat, by refusing to take the qualification oath appointed to be taken by the first of those acts on the requisition of any candidate or of any two voters at the election, or that which, by the other, every member

resident within the shire, where chosen, the day of the date of the writ of summons, but this statute is now repealed by the 14 *Geo.* 3. *c.* 58.

33 *Hen.* 6. *c.* 14. "The knights of the shires for the parliament, hereafter to be chosen, shall be notable knights of the same counties for which they shall be chosen; or otherwise such notable esquires, gentlemen of the same counties as shall be able to be knights. And no man to be such knight which standeth in the degree of a yeoman and under.

What sort of persons shall be chosen knights of the shire.

But this is now reduced to a greater certainty by the 9 *Ann.* *c.* 5. which, "for the better preserving the constitution and freedom of parliament," enacts, "That no person shall be capable to sit or vote, as a member of the house of commons for any county, city, borough, or cinque port, within that part of Great Britain called England, the dominion of Wales, and town of Berwick upon Tweed, who shall not have an estate, freehold or copyhold, for his own life, or for some greater estate, either in law or

9 A. c. 5.

No person shall be a member who hath not an estate, &c.

for he shall presume to sit or vote. The eldest sons or heirs apparent of Peers, or of any person qualified to be knights of the shire, and the members for the two universities, and for Scotland, are not required to have the qualifications necessary for other members by the 9 *Ann.* *c.* 5. nor obliged to take the oaths just mentioned; so that if any one answering to either of those descriptions were to be chosen, and returned, against his inclination, it would seem that he must submit, unless the minister should come to his relief, by bestowing an incapacitating office upon him. 1 Doug. 283, 4.

T

in

in equity, to and for his own use and benefit, of or in lands, tenements, or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, lying or being within that part of Great Britain called England, the dominion of Wales, and town of Berwick upon Tweed, of the respective annual value hereafter limited, viz. The annual value of 600l. above reprises for every knight of a shire, and the annual value of 300l. above reprises, for every citizen, burgess, or baron of the cinque ports; and that if any person who shall be elected, or returned to serve in any parliament as a knight of a shire or as a citizen, burgess or baron of the cinque ports, shall not, at the time of such election and return*, be seized of or entitled to such an estate, in lands, tenements, or hereditaments, as for such knight, or for such citizen, burgess, or baron respectively, is hereinbefore required or limited, such election and return shall be void."

* An objection was made in the Bristol case in 1786, that the qualification of Mr. Cruger, who was elected, was executed during the poll; but the committee overruled the objection. Simeon § 1. And in the same case, though the conveyance was made to a trustee (Mr. Cruger being in America at the time) in consideration of 10,000l. not a farthing of which was paid, but was secured only by a subsequent mortgage of the estate pretended to be sold, and though it appeared to have been the same estate, formerly conveyed to Mr. Cruger, to give him a qualification on a former election, yet Mr. Simeon observes, the committee must, by confirming the election, have determined this a sufficient qualification. Ibid.

" Nothing

2. "Nothing in this act contained, shall extend to make the eldest son, or heir apparent of any peer or lord of parliament, or of any person qualified by this act to serve as knight of a shire, incapable of being elected and returned, and sitting and voting as a member of the house of commons in any parliament."

This act not to extend to the eldest son of a peer, or of a person qualified to serve as a knight of a shire.

3. "Nothing in this act contained, shall extend or be construed to extend to either of the universities, in that part of Great Britain called England, but that they, and each of them may elect and return members to represent them in parliament as heretofore they have done; any thing herein contained to the contrary notwithstanding."

The universities may elect and return members as formerly.

4. "No person whatsoever, shall be construed to be qualified to sit in the house of commons, within the meaning of this act, by virtue of any mortgage whatsoever whereof the equity of redemption is in any other person or persons, unless the mortgagee shall have been in possession of the mortgaged premises, for the space of seven years before the time of his election; any thing herein contained to the contrary notwithstanding."

None to be qualified by virtue of any mortgage unless the mortgagee has been in possession seven years before the election.

5. "Every person (except as aforesaid) who, from and after the determination of this present parliament, shall appear as a candidate, or shall by himself or any others be proposed to be elected to serve as a member of the house of commons, for any county, city, borough, or cinque

Every candidate at the request of another candidate, or of two of the voters, shall take the following oath.

port in England, Wales, or Berwick upon Tweed, shall, and he is hereby enjoined and required, upon reasonable request to him to be made (at the time of such election, or before the day to be prefixed in the writ of summons for the meeting of the parliament) by any other person who shall stand candidate at such election, or by any two or more persons having right to vote at such election, take a corporal oath in the form or to the effect following :

The oath.

" I, A. B. do swear, that I truly and bona fide have such an estate in law or equity, to and for my own use and benefit, of or in lands, tenements, or hereditaments, (over and above what will satisfy and clear all incumbrances that may affect the same) of the annual value of 600l. above reprises, as doth qualify me to be elected and returned to serve as a member for the county of
according to the tenor and true meaning of the act of parliament in that behalf; and that my said lands, tenements, or hereditaments, are lying or being within the parish, township, or precincts of
or in the several parishes, townships, or precincts of in the county of
or in the several counties of
(as the case may be)."

If the candidate be for a city, &c. the oath shall relate only to 300l. per annum : mutatis mutandis.

6. " And in case such candidate or person is to serve for any city, borough, or cinque port, then the said oath shall relate only to the said value of
 300l.

300l. per annum, and be taken to the same effect, *mutatis mutandis*, as is hereby prescribed for the oath of a person to serve as a member for such county as aforesaid."

7. "The respective oaths aforesaid shall and may be administered by the sheriff or under-sheriff for any such county as aforesaid, or by the mayor, bailiff, or other officer or officers, for any city, borough, or port, to whom it shall appertain to take the poll, or make the return, at such election for the same county, borough, or port respectively, or by any two or more justices of the peace within England, Wales, and Berwick upon Tweed; and the said sheriff, mayor, bailiff, or other officers, and the said justices of the peace respectively, who shall administer the said oaths, are hereby required to certify the taking thereof into her majesty's high court of chancery, or the queen's bench, within three months after the taking the same, under the penalty of forfeiting the sum of 100l. to wit, one moiety thereof to the queen, and the other moiety thereof to such person or persons as will sue for the same, to be recovered with full costs of suit, by action of debt, bill, plaint or information in any of her majesty's courts of record at Westminster; and if any of the said candidates, or persons proposed to be elected as aforesaid, shall wilfully refuse, upon reasonable request to be made at the time of the election, or at any time before the day upon which such parliament by

The oath to be administered by the sheriff, &c. who shall, within three months after the taking thereof, certify the same into the Queen's - Bench or Chancery, or forfeit 100l.

One moiety to the Queen, the other to him who shall sue, &c. with costs.

Candidate refusing to take the oath, his election to be void.

the writ of summons is to meet, to take the oath hereby required, then the election and return of such candidate or person shall be void."

One shilling for administering the oath, 2s. for certificate, and 2s. for filing.

Penalty 20l.

18 Journ. 629.
21 Nov. 1717.

Ibid.

Ibid.

8. No fee or reward shall be taken for administering any such oath, or making, receiving, or filing the certificate thereof, except one shilling for administering the oath, and two shillings for making the certificate, and two shillings for receiving and filing the same, under the penalty of 20l. to be forfeited by the offender, and to be recovered and divided as aforesaid."

In a few years after this act passed, the house made several standing orders for enforcing the same, viz. 1. "That notwithstanding the oath taken by any candidate at or after any election, his qualification may afterwards be examined into."

2. "That the person whose qualification is expressly objected to in any petition relating to his election, shall within fifteen days after the petition received, give to the clerk of the house of commons, a paper signed by himself, containing a rental or particular of the lands, tenements, and hereditaments, whereof he makes out his qualification, of which any person concerned may have a copy."

3. "That of such lands, tenements, and hereditaments whereby the party hath not been in possession, for three years before the election, he shall also insert in the same paper from what person,

person, and by what conveyance or act in law he claims and derives the same; and also the consideration if any paid; and the names and places of abode of the witnesses to such conveyance and payment."

4. "That if any sitting member shall think *fit to question* the qualification of a petitioner he shall within fifteen days after the petition received, leave notice* thereof in writing with the clerk of the house of commons; and the petitioner shall in such case within fifteen days after such notice, leave with the said clerk of the house, the like account in writing of his qualification, as if required from a sitting member." 18 Journ. 629.

The last order being evaded by presenting petitions in the names of the *electors*, and not of the unsuccessful candidate, the house extended the same, by the following standing order: "That on the petition of any elector or electors, for any county, city, or place, sending members to parliament, complaining of an undue election and return, and alledging that some other person was duly elected, and ought to have been returned; the sitting member so complained of, may demand and examine into the qualification of such person so alledged to be duly elected, in the same manner as if such person had himself petitioned." 22 Journ. 355.
6. Feb. 1734.

* Vide a form of the notice in the appendix.

1 Lud. 415.

3 Lud. 166.

Mr. Potter's election in the case of Colchester in 1784, was declared void for not complying with the second of the before-mentioned orders. † But in another case, from this borough; certain electors in the interest of Commodore Affleck, (who was out of the kingdom at the election, and when the cause came on before the committee) petitioned the house against the return of Mr. Potter. The petitioners admitted before the committee that they had been duly served with notice to produce the Commodore's qualification; but contended that it ought not to be required of them, on account of the absence of their candidate; and the committee resolved, "That the sitting member should not be permitted to go into Commodore Affleck's qualification; he having been abroad at the time of the election, and having continued in the West-Indies ever since."

33 G. II. c. 20, all members (not particularly excepted) before they act, are to deliver in at the table, while the house is sitting, a signed schedule of their respective qualifications.

In order to render the statute of Ann more effectual, further regulations became necessary, and therefore it was enacted by the 33 Geo. II. c. 20. "That every person (except as is hereinafter excepted) who shall be elected a member of the house of commons, shall, before he presumes to vote in the house of commons or sit there during any debate in the said house of commons after their speaker is chosen, produce and deliver in to the clerk of the said house, at the table in the middle of the said house, and whilst the house of commons is there duly sitting, with their speaker

speaker in the chair of the said house, a paper or account,* signed by every such member, containing the name or names of the parish, township, or precinct, or of the several parishes, townships, or precincts, and also of the county, or of the several counties, in which the lands, tenements, or hereditaments do lie, whereby he makes out his qualification, declaring the same to be of the annual value of six hundred pounds above reprises, if a knight of a shire; and of the annual value of three hundred pounds, above reprises, if a citizen, burgess, or baron of the cinque ports; and shall also, at the same time, take and subscribe the following oath; viz.

and take and
subscribe the fol-
lowing oath;

"I A. B. do swear, that I truly and bona fide have such an estate in law or equity, and of such value, to and for my own use and benefit, of or in lands, tenements or hereditaments, over and above what will satisfy and clear all incumbrances that may affect the same, as doth qualify me to be elected and returned to serve as a member for the place I am returned for, according to the tenor and true meaning of the acts of parliament in that behalf; and that such lands, tenements, or hereditaments, do lie as described in the paper or account signed by me, and now delivered to the clerk of the house of commons.

So help me God."

* Vide a form in the appendix.

And

which is to be administered by the house, and inrolled, after the usual oaths of qualification have been taken;

And the said house of commons is hereby empowered and required to administer the said oath and subscription, according to the directions of this act, as occasion shall be, from time to time, to every person duly demanding the same, immediately after such person shall have taken the oaths of allegiance, supremacy, and abjuration,* at the said table: and the said oath and subscription herein-before directed to be taken and made, shall be entered in a parchment roll, to be provided for that purpose by the clerk of the house of commons; and the said papers or accounts, so signed and delivered in to the said clerk as aforesaid, shall be filed and carefully kept by him."

and the schedules to be filed.

Any member presuming to act contrary thereto,

or without being duly qualified, his election is void, and a new writ to be issued.

Persons excepted out of the general qualifications

2. "If any person who shall be elected to serve in any future parliament as a knight of a shire, or as a citizen, burgess, or baron of the cinque ports, shall presume to sit or vote as aforesaid as a member of the house of commons, before he has delivered in such paper or account, and taken and subscribed such oath as aforesaid, or shall not be qualified according to the true intent and meaning of the said recited act, and of this act; his election shall be and is hereby declared to be void, and a new writ shall be issued to elect another member in the said person's room."

3. "Nothing in this act contained, shall extend to the eldest son or heir-apparent of any

* Vide these oaths in the appendix.

peer or lord of parliament, or of any person qualified to serve as a knight of a shire, or to the the members for either of the universities in that part of Great-Britain called England, or to the members of that part of Great-Britain called Scotland."

And for disabling papists to sit in either house, the 30 *Car. II. ft. 2. c. 1.* enacts "That from and after the first day of December, which shall be in the year of our Lord God 1678, no person that now is or hereafter shall be a peer of this realm, or member of the house of peers, shall vote, or make his proxy in the house of peers, or sit there during any debate in the said house of peers; nor any person that now is or hereafter shall be a member of the house of commons, shall vote in the house of commons, or sit there during any debate in the said house of commons after their speaker is chosen; until such peer or member shall, from time to time respectively, and in manner following, first take the several oaths of allegiance and supremacy, and make, subscribe, and audibly repeat this declaration following:

Oaths to be taken by members previous to voting or sitting.

30 C. II. ft. 2. c. 1.

No person to be member without taking the oaths.

"I, A. B. do solemnly and sincerely The declaration.
in the presence of God, profess, testify,
and declare, that I do believe that in the
sacrament of the Lord's Supper, there is
not any transubstantiation of the elements
of bread and wine into the body and blood
of Christ, at or after the consecration
thereof

MEMBERS.

thereof by any person whatsoever: and that the invocation or adoration of the Virgin Mary, or any other saint, and the sacrifice of the Mass, as they are now used in the church of Rome, are superstitious and idolatrous. And I do solemnly, in the presence of God, profess, testify, and declare, that I do make this declaration and every part thereof, in the plain and ordinary sense of the words read unto me, as they are commonly understood by English Protestants, without any evasion, equivocation, or mental reservation whatsoever, and without any dispensation already granted me for this purpose by the Pope, or any other authority or person whatsoever, or without any hope of any such dispensation from any person or authority whatsoever, or without thinking, that I am or can be acquitted before God or man, or absolved, of this declaration or any part thereof, although the Pope, or any other person or persons, or power whatsoever, should dispense with or annul the same, or declare that it was null or void from the beginning."

4. "Which said oaths and declarations shall be in this and every succeeding parliament, solemnly and publicly made and subscribed betwixt the hours of nine in the morning and four in the afternoon, by every such peer and member
of

of the house of peers, at the table in the middle of the said house, before he takes his place in the said house of peers, and whilst a full house of peers is there with their speaker in his place; and by every such member of the house of commons, at the table in the middle of the said house, and whilst a full house of commons is there duly sitting with their speaker in his chair; and that the same be done in either house, in such like order or method as each house is called over by respectively."

The time and place of taking the oaths and making and subscribing the declaration.

Members of parliament not swearing and declaring as aforesaid, and recusants convicted, forbidden the king's or queen's presence.

5. "From and after the first day of December, every peer of this realm and member of the house of peers, and every peer of the kingdom of Scotland, or of the kingdom of Ireland, being of the age of one and twenty years or upwards, not having taken the said oaths and made and subscribed the said declaration; and every member of the said house of commons not having as aforesaid taken the said oaths, and made and subscribed the said declaration; and every person now or hereafter convicted of Popish recusancy, who hereafter shall at any time, after the said first day of December, come advisedly into or remain in the presence of the king's majesty, or queen's majesty, or shall come into the court or house where they or any of them reside, as well during the reign of his present majesty (whose life God long preserve) as during the reign of any of his royal successors kings or queens of England; shall incur and suffer all the pains, penalties, for-

contained

feitures, and disabilities, in this act mentioned or contained; unless such peer, member or person so convicted, do respectively, in the next term after such is coming or remaining, take the said oaths, and make and subscribe the said declaration in his majesty's high court of chancery, between the hours of nine and twelve in the forenoon."

The penalty upon members of parliament offending contrary to this act.

6. "If any person that now is, or hereafter shall be a peer of this realm, or member of the house of peers, or member of the house of commons, shall presume to do any thing contrary to this act, or shall offend in any of the cases aforesaid; That then every such peer and member so offending, shall from thenceforth be deemed and adjudged a Popish recusant convict to all intents and purposes whatsoever; and shall forfeit and suffer as a Popish recusant convict; and shall be disabled to hold or execute any office or place of profit or trust, civil or military, in any of his majesty's realms of England or Ireland, dominion of Wales, or town of Berwick-upon-Tweed, or in any of his majesty's islands, or foreign plantations to the said realms belonging; and shall be disabled from thenceforth to sit or vote in either house of parliament, or make a proxy in the house of peers, or to sue or use any action, bill, plaint, or information in course of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed

deed of gift, and shall forfeit, for every willful offence against this act, the sum of five hundred pounds to be recovered and received by him or them that shall sue for the same, and to be prosecuted by any action of debt, suit, bill, plaint, or information in any of his majesty's courts at Westminster, wherein no essoin, protection, or wager of law shall lie."

7. "From the said first day of December, it shall and may be lawful, to and for the house of peers and house of commons, or either of them respectively, as often as they or either of them shall see occasion, either in this present parliament, or any other hereafter to be holden, to order and cause all or any of the members of their respective houses of parliament, openly in their respective houses of parliament, to take the said oaths, and to make and subscribe the said declaration, at such times and in such manner as they shall appoint. And if any peer shall, contrary to such order made by their said house, willfully presume to sit therein, without taking the said oaths, and subscribing the said declaration, according to the said order, every such peer, or member of the house of peers, so presuming to sit, shall be adjudged, and is hereby declared, to be incapable, and disabled in law, to all intents and purposes whatsoever, to sit in the said house of peers, and give any voice therein, either by proxy or otherwise howsoever, during that parliament ;

Either house of parliament may cause any of their members to swear and subscribe as aforesaid.

liament; and if any member or members of the house of commons shall, contrary to such order made by their house, willfully presume to sit therein, without taking the said oaths, and making and subscribing the said declaration, every such member or members of the house of commons so presuming to sit, shall be adjudged, and is hereby declared, to be incapable and disabled in law, to all intents and purposes whatsoever, to sit in the said house of commons, or give any voice therein during that parliament."

The places of members of the house of commons, disabled to vote, shall be void and writs issued out for new elections.

8. "In every case where any member or members of the house of commons shall, by virtue of this act, be disabled to sit or vote in the house of commons, then and in every such case, without any further conviction or other proceedings against such member or members, the place or places for which they or any of them were elected, is hereby declared void; and a new writ or writs shall issue out of the high court of chancery, by warrant or warrants from the speaker of the house of commons for the time being, and by order of the said house, for the election of a new member or members to serve in the house of commons, in the place or places of such member or members so disabled, to all intents and purposes, as if such member or members were naturally dead."

A member must also qualify himself by taking the oath of abjuration as directed by the 1 Geo. I.

§. 2.

ſt. 2. *c.* 13. *f.* 16. which enacts, " That from and after the 29th day of September in the year of our Lord 1715, no person that now is or hereafter shall be a peer of this realm, or member of the house of peers shall vote, or make his proxy in the house of peers, or sit there during any debate in the said house of peers; nor any person that now is, or hereafter shall be a member of the house of commons, shall vote in the house of commons, or sit there during any debate in the said house of commons after the speaker is chosen; until such peer or member shall from time to time respectively take the abjuration oath aforesaid,* instead of the oath of abjuration which before by law ought to have been taken, in such manner, and together with such other oaths, and declaration against transubstantiation ought to have been taken."

1 G. I. *f.* 2. *c.* 13. No member of either house of parliament shall be capable of voting, &c. till he has taken the abjuration oath.

14. " If any member that now is, or hereafter shall be a peer of this realm, or member of the house of peers, or member of the house of commons, in this or any succeeding parliament, and after the said 29th day of September, presume to vote, or make his proxy, not having taken the said oath, and subscribed the same as aforesaid, every such peer or member so offending shall be disabled to sue, or use any action, bill, plaint, or information, in any court of law, or to prosecute any suit in any court of equity, or to be guardian of any child, or executor or administra-

Punishment of members presuming to vote.

tor of any person, or be capable of any legacy or deed of gift, or to be in any office within this realm of Great-Britain, or to vote at any election for members to serve in parliament, and shall forfeit the sum of 500*l.* to be recovered by him or them that shall sue for the same," in the manner therein mentioned.

III. Of their Privileges.

1 Bl. Com. 164.

Privilege of parliament was principally established, in order to protect its members, not only from being molested by their fellow-subjects, but also more especially from being oppressed by the power of the crown. If therefore all the privileges of parliament were once to be set down and ascertained, and no privilege allowed but what was defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member, and violate the freedom of parliament. The dignity and independence of the two houses are therefore in great measure preserved by keeping their privileges indefinite. Some however of the more notorious privileges of the members of either house are, privilege of *speech*, of *person*, of their *domestics*, and of their *lands* and *goods*.

Of speech.

As to privilege of speech, this is declared by the statute of 1 *W. & M. ft. 2. c. 2.* as one of the liberties

liberties of the people, "that the freedom of speech and debates, and proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament." And 1 Bl. Com. 164. this freedom of speech is particularly demanded of the king in person by the speaker of the house of commons, at the opening of every new parliament. So likewise are the other privileges, of Of persons, &c. persons, servants, lands, and goods: which are immunities as ancient as Edward the confessor; in whose laws is this precept, "*ad synodos venien-* c. 3.
tibus, sive summoniti sint, sive per se quid agendum
habuerint, sit summa pax:" and in the old Gothic constitutions, "*extenditur hæc pax et securitas*
ad quatuordecim dies, convocato regni senatu." This included formerly, not only privilege from illegal violence, but also from legal arrests, and seizures by process from the courts of law. And 5 H. IV. c. 6.
11 H. VI. c. 11. still to assault by violence a member of either house, or his menial servants, is a high contempt of parliament, and there punished with the utmost severity.

The law and privilege of parliament is part of the law of the land; and a member cannot be arrested, except in cases of treason, felony, and actual breach of the peace, without a breach of the privilege of parliament. But all other privileges which derogate from the common law in matters of civil right, are now at an end, save only as to the freedom of the members person: Willf. par. 2. 159
4 Inst. 24. 25.
Com. Journ. 17
Aug. 1741. 20
May 1645.

2. Lev. 72.
1 Bl. Com. 165

which in a peer (by the privilege of peerage) is for ever sacred and inviolable; and in a commoner (by the privilege of parliament) for forty days after every prorogation, and forty days before the next appointed meeting: which is now in effect as long as the parliament subsists, it seldom being prorogued for more than four-score days at a time.

Privileges restrained.

Those privileges which obstructed the ordinary course of justice were restrained by the 12 & 13 Will. III. c. 3. the 2 & 3 Ann c. 18. and the 11 Geo. II. c. 24; and abolished by the 10 Geo. III. c. 50.

12 & 13 W. III.
c. 3.

The 12 & 13 W. III. c. 3. "*for preventing any inconveniences that may happen by privilege of parliament,*" enacts, "That any person and persons shall and may commence and prosecute any action or suit in any of his majesty's courts of record at Westminster, or high-court of chancery, or court of exchequer, or the dutchy court of Lancaster, or in the court of admiralty, and in all causes matrimonial and testamentary in the court of the arches, the prerogative courts of Canterbury and York, and the delegates, and all courts of appeal, against any peer of this realm, or lord of parliament, or against any of the knights, citizens, and burgessees of the house of commons for the time being, or against their or any of their menial or other servants, or any other person entitled to the privilege of parliament, at any time from and immediately

Action may be commenced against any peer or member of parliament, &c. in the interval of parliament, &c.

immediately after the dissolution or prorogation of any parliament, until a new parliament shall meet, or the same be re-assembled, and from and immediately after any adjournment of both houses of parliament for above the space of fourteen days, until both houses shall meet or re-assemble; and that the said respective courts shall and may, after such dissolution, prorogation, or adjournment as aforesaid, proceed to give judgment, and to make final orders, decrees, and sentences, and award execution thereupon; any privilege of parliament to the contrary notwithstanding."

And after prorogation, &c. court may give judgment.

2. "That this act shall not extend to subject the person of any of the knights, citizens, and burgeses of the house of commons, or any other person entitled to the privilege of parliament, to be arrested during the time of privilege. Nevertheless, if any person, or persons, having cause of action, or complaint against any peer of this realm, or lord of parliament, such person, or persons, after any dissolution, prorogation, or adjournment as aforesaid, or before any session of parliament, or meeting of both houses as aforesaid, shall and may have such process out of his majesty's courts of king's bench, common pleas, and exchequer, against such peer, or lord of parliament as he or they might have had against him out of the time of privilege; and if any person, or persons, having cause of action against

Persons may have process against any peer, &c. after dissolution of parliament.

any of the said knights, citizens, or burgesſes, or any other perſon entitled to privilege of parliament, after any diſſolution, prorogation, or ſuch adjournment as aforeſaid, or before any ſeſſions of parliament, or meeting of both houſes as aforeſaid, ſuch perſon or perſons ſhall and may proſecute ſuch knight, citizen, or burgeſs, or other perſon entitled to the privilege of parliament, in his majeſty's courts of king's-bench, common pleas, or exchequer, by ſummons and diſtreſs infinite, or by original bill and ſummons, attachment and diſtreſs infinite thereupon to be iſſued out of any of the ſaid courts of record, which the ſaid reſpective courts are hereby impowered to iſſue againſt them, or any of them, until he or they ſhall enter a common appearance, or file common bail to the plaintiff's action, according to the courſe of each reſpective court, and any perſon or perſons having cauſe of ſuit or complaint, may, in the times aforeſaid, exhibit any bill or complaint againſt any peer of this realm, or lord of parliament, or againſt any of the ſaid knights, citizens, or burgesſes, or other perſon entitled to the privilege of parliament, in the high court of chancery, court of exchequer, or dutchy court of Lancaſter, and may proceed thereupon by letter or *ſubpana* as is uſual, and upon leaving a copy of the bill with the defendant, or at his houſe or lodging, or laſt place of abode, may proceed thereon, and, for want of an appearance or anſwer,

And may exhibit
bill againſt any
peer or member,
&c.

swer, or for non-performance of any order or decree, or breach thereof, may sequester the real and personal estate of the party, as is used and practised where the defendant is a peer of this realm, but shall not arrest or imprison the body of any of the said knights, citizens, and burgessees, or other privileged person, during the continuance of privilege of parliament."

And sequester the party's estate, but not arrest his body.

3. "That where any plaintiff shall, by reason or occasion of privilege of parliament, be stayed or prevented from prosecuting any suit by him commenced, such plaintiff shall not be barred by any statute of limitation, or nonsuited, dismissed, or his suit discontinued, for want of prosecution of the suit by him begun, but shall from time to time, upon the rising of the parliament, be at liberty to proceed to judgment and execution."

Plaintiff prevented from prosecuting by privilege of parliament, not to be barred by any statute of limitation, &c.

4. "That no action, suit, process, order, judgment, decree, or proceeding in law or equity against the king's original and immediate debtor, for the recovery or obtaining of any debt or duty originally and immediately due or payable unto his majesty, his heirs or successors, or against any accountant, or person answerable or liable to render any account unto his majesty, his heirs or successors, for any part or branch of any of his or their revenues, or other original or immediate debt or duty, or the execution of any such process, order, judgment, decree, or proceedings, shall be impeached, stayed, or delayed, by or

No action, &c. against the king's immediate debtor, &c.

Shall be stayed by privilege of parliament; but person not liable to be arrested, &c.

under the colour or pretence of any privilege of parliament; yet so, nevertheless, that the person or persons of any such debtor, or accountant, or person answerable or liable to account, being a peer of this realm or lord of parliament, shall not be liable to be arrested or imprisoned by or upon any such suit, order, judgement, decree, process, or proceedings, or being a member of the house of commons, shall not, during the continuance of the privilege of parliament, be arrested or imprisoned, by or upon any such order, judgment, decree, process, or proceedings."

Provide,

5. "That neither this act, nor any thing herein contained, shall extend to give any jurisdiction, power, or authority, to any court to hold plea in any real or mixed action, in any other manner than such court might have done before the making this act."

2. & 3. A. c. 18.

The 2d and 3d Ann c. 18. "*for the further explanation and regulation of privilege of parliament in relation to persons in public offices,*" recites, "Whereas it is most just and reasonable that persons employed in offices and places of public trust, should at all times be accountable for any misdemeanors therein, and the public justice of the realm requireth a vigorous prosecution of such offenders:" And therefore enacts,

Action may be prosecuted against any officer of the revenue or

"That any action or suit shall and may be commenced and prosecuted in any of her majesty's courts

courts at Westminster, against any officer or person intrusted or employed in the revenue of her majesty, her heirs or successors, or any part or branch thereof, or any other office or place of public trust, for any forfeiture, misdemeanor, or breach of trust, of, in, or relating to such office or place of trust, or any penalty imposed by law to enforce the due execution thereof, and that no such action, suit or any other process, proceeding, judgment, or execution thereupon although such officer or person shall be a peer of this realm, or lord of parliament, or one of the knights, citizens, or burgesses of the house of commons, or otherwise entitled to the privilege of parliaments, shall be impeached, stayed, or delayed by or under colour, or pretence of any privilege of parliament."

any other place
of public trust
for any misde-
meanor, &c.

No such action
to be stayed on
pretence of pri-
vilege of parlia-
ment.

" 2. That nothing in this act shall extend to subject the person of such officer, being a peer of this realm, or lord of parliament, to be arrested or imprisoned, but that all process shall issue against such officer or person, being a peer of this realm, or lord of parliament, as should have issued against him out of the time of privilege. Nor shall extend to subject the person of such officer being a knight, citizen, or burgess of the house of commons, to be arrested or imprisoned, during the time of privilege of parliament, and that against such officer or other person, being a knight, citizen, or burgess of the house of commons entitled to privilege, shall

Act not to sub-
ject the person of
peer to impris-
onment.

Nor member of
the house of
commons.

be

be issued summons and distress infinite or original bill, summons, attachment, and distress infinite, which the said respective courts are hereby impowered to issue in such case, until the party shall appear upon such process according to the course of such respective court."

11. G. II. c. 24.

Persons may prosecute actions against members of parliament in the intervals of sessions. [This is amended by the 10. G. III. c. 50. next mentioned.]

The 11. *Geo. II. c. 24*, after reciting, that the privilege of parliament was restrained only in actions or suits, commenced or prosecuted in the courts, and for the causes particularly mentioned in the 12. and 13. *Will. III.* enacts, "That any person and persons shall and may commence and prosecute in Great Britain or Ireland any action or suit in any court of record, or court of equity, or of admiralty, and in all causes matrimonial and testamentary, in any court having cognizance of causes matrimonial and testamentary, against any peer, or lord of parliament of Great Britain, or against any of the knights, citizens, and burgessees of the house of commons of Great Britain for the time being, or against their or any of their menial or other servants, or any other person entitled to the privilege of the parliament of Great Britain, at any time from and immediately after the dissolution or prorogation of any parliament, until a new parliament shall meet, or the same be re-assembled, and from and immediately after any adjournment of both houses of parliament for above the space of fourteen days, until both houses

houses shall meet or re-assemble, and that the said respective courts, shall and may after such dissolution, prorogation, or adjournment as aforesaid, proceed to give judgment, and to make final orders, decrees, and sentences, and award execution thereupon, any privilege of parliament to the contrary notwithstanding."

2. "That this act shall not extend to subject the person of any of the knights, citizens, and burgeses of the house of commons of Great Britain, or any other person entitled to privilege of parliament, to be arrested during the time of privilege, nevertheless, it shall and may be lawful to and for any of the courts of great sessions in Wales, courts of session, in the counties palatine of Chester, Lancaster, and Durham, courts of king's bench, common pleas, and exchequer in Ireland, after any dissolution, prorogation, or such adjournment as aforesaid, or before any session of parliament, or meeting of both houses as aforesaid, to have and use such and the like methods of proceeding, and to issue such and the like process against any such peer, or lord of parliament, or against any of the said knights, citizens, and burgeses, or other persons entitled to the privilege of the parliament of Great Britain, as the courts of king's bench, common pleas, and exchequer in England, are by the said recited act impowered and directed to use and issue respectively; and that it shall
and

Members not liable to be arrested during privilege.

The courts of Great Sessions in Wales, and sessions in counties palatine to proceed against members, as the courts at Westminster.

and may be lawful to and for the court of chancery of Ireland, and the court of equity in the exchequer there, to have and use such and the like methods of proceeding, and to issue such and the like process within the times and against the persons aforesaid, as the high court of chancery of Great Britain, and the court of exchequer in England, are by the said recited act respectively directed and impowered to use and issue; and that it shall and may be lawful to and for any of the other courts herein-before described, the process whereof is not particularly directed by the said recited act, or by this act, after any dissolution, prorogation, or such adjournment as aforesaid, or before any session of parliament, or meeting of both houses as aforesaid, to issue such and the like process, against any such peer, or lord of parliament, or against any of the said knights, citizens, or burgesses, or other person entitled to the privilege of parliament, as such courts may now lawfully issue against persons not liable to be arrested or imprisoned."

Plaintiffs not
barred or non-
sued,

3. "That where any plaintiff shall, by reason or occasion of privilege of parliament, be stayed or prevented from prosecuting any suit by him commenced, such plaintiff shall not be barred by any statute of limitation, or nonsuited, dismissed, nor his suit discontinued for want of prosecution of the suit by him begun, but shall, from

from time to time, upon the rising of the parliament, be at liberty to proceed to judgment and execution."

4. "That no action, suit, process, order, judgment, decree, or proceeding in law or equity, against the king's original and immediate debtor, for the recovery or obtaining of any debt or duty originally and immediately due or payable unto his majesty, his heirs or successors, or against any accountant, or person answerable, or liable to render any account unto his majesty, his heirs or successors, for any part or branch of any of his or their revenues, or other original and immediate debt, or duty, or the execution of any such process, order, judgment, decree, or proceedings, shall be impeached, stayed, or delayed in any court in Great Britain or Ireland, by or under the colour or pretence of any privilege of the parliament of Great Britain; yet so nevertheless, that the person of any such debtor, or accountant, or person answerable or liable to account, being a peer, or lord of parliament of Great Britain, shall not be liable to be arrested or imprisoned, by or upon any such suit, order, judgment, decree, process, or proceedings; or being a member of the house of commons of Great Britain, shall not, during the continuance of the privilege of parliament, be arrested or imprisoned by or upon any such order, judgment, decree, process, or proceedings."

Nor process against the king's debtor to be stayed by privilege of parliament.

But the persons not to be arrested.

5. "That

Proviso.

5. "That neither this act, nor any thing therein contained, shall extend to give any jurisdiction, power, or authority to any court to hold plea in any real or mixt action, in any other manner than such court might have done before the making this act."

10. G. III. c. 50.

10. *Geo. III. c. 50.* recites, "Whereas the several laws heretofore made for restraining the privilege of parliament with respect to actions or suits commenced and prosecuted at any time from and immediately after the dissolution or prorogation of any parliament, until a new parliament should meet, or the same be re-assembled, and from and immediately after an adjournment of both houses of parliament for above the space of fourteen days, until both houses should meet or assemble, are insufficient to obviate the inconveniencies arising from the delay of suits by reason of privilege of parliament; whereby the parties often lose the benefit of several terms:" Wherefore it enacts, "That any person or persons shall and may, *at any time*, commence and prosecute any action or suit in any court of record, or court of equity, or of admiralty, and in all causes matrimonial and testamentary, in any court having cognizance of causes matrimonial and testamentary, against any peer or lord of parliament of Great Britain, or against any of the knights, citizens, and burgesses, and the commissioners for shires and burghs of the house

Suits may be prosecuted in courts of record, equity, or admiralty, and courts having cognizance of causes matrimonial and testamentary, against peers, and members of the house of commons, and their servants, &c.

of commons of Great Britain for the time being, or against their or any of their menial or any other servants, or any other person entitled to the privilege of parliament of Great Britain; and no such action, suit, or any other process or proceeding thereupon, shall at any time be impeached, stayed, or delayed, by or under colour or pretence of any privilege of parliament."

2 "That nothing in this act shall extend to subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires and burghs of the house of commons of Great Britain for the time being, to be arrested or imprisoned upon any such suit or proceedings."

But the persons of members of the house of commons, not to be arrested, or imprisoned.

3. "And whereas the process by *distingas* is dilatory and expensive: for remedy thereof, be it enacted by the authority aforesaid, That the court, out of which the writ proceeds, may order the issues levied from time to time to be sold, and the money arising thereby to be applied to pay such costs to the plaintiff, as the said court shall think just, under all the circumstances, to order; and the surplus to be retained until the defendant shall have appeared, or other purpose of the writ be answered."

Court out of which writ proceeds, may order the issues to be sold, and money arising thereby to be applied to pay costs to plaintiff.

Surplus to be retained till appearance of defendant, &c.

4. "When the purpose of the writ is answered, That then the said issues shall be returned; or, if sold, what shall remain of the money arising

When purpose is answered, issues to be returned; or, if sold, money remaining to be repaid.

arising by such sale, shall be repaid to the party distrained upon."

Obedience to rule of the court of king's bench, common pleas, or exchequer, may be enforced by distress infinite.

5. "That obedience may be enforced to any rule of his majesty's courts of king's bench, common pleas, or exchequer, against any person entitled to privilege of parliament, by distress infinite, in case any person or persons entitled to the benefit of such rule shall chuse to proceed in that way."

Dyer 59. 4Pryn. Brev. Earl. 757.

It seems that formerly the usual and indeed necessary way of taking advantage of privilege, was to plead the same, or to bring a writ of privilege in the nature of a *superfedeas* to deliver the party out of custody when arrested in a civil suit; and that applications in other manner, or even by motion in court, were held insufficient. As where the defendant being a burgess of parliament brought a letter from the speaker to the king's bench to stay, &c. it was disallowed by the court; for as the book says it ought to have been a writ of privilege; and in this case it was said, that when Thorpe was speaker he had a general *superfedeas* for all actions against him; and it was held ill.

Latch. 48. Noy. 83.

M. 7. G. II. 2. Barnard K.B. 423. 433. 448. Com. Rep. 444. pl. 108. 2. Stra. 985. Fortesc. Rep. 159. 342.

But in the case of colonel Pitt who was arrested two days after the dissolution of that parliament of which he was a member, and which was held to be within time of privilege*, the

* On a dissolution of parliament, the members have privilege *redempti* for a reasonable time. Vide the cases cited in the margin.

quest-

question of the greatest difficulty was, how he should be relieved, and whether he could not be discharged on motion, without bringing his writ of privilege; and it was held by ten judges, that though a writ of privilege was heretofore held a sure and legal remedy, that notwithstanding, and especially since the statute 12. and 13. *Will. III. c. 3.* which expressly provides that no person entitled, &c. shall be arrested during time of privilege, that he might be discharged on motion; for the judges are to take notice of every act of parliament, and to take care that they be duly executed: and this method was since the making of the above mentioned statute thought more adviseable by the judges than a plea or writ of privilege, as the act does not make the process void, but only avoidable; and there could be no plea to a process for irregularity which is aided by the appearance of the party.

10 Mod. 86.
Str. 155. 2.
Stra. 989. 1072.

A person chosen to serve in parliament shall not have privilege before the day of session; for there is no clerk of parliament to certify, and the court will not admit affidavits in that case; he ought to sue his writ of privilege in chancery, on the return of his election.

Sid. 42. 11. 9.
Kel. Rep. 3. pl.
7. T. Raym 12.
See Fortesc. Rep.
162.

The privilege, order, or custom of parliament, either of the upper house, or house of commons, belongs to the determination or decision only of the court of parliament; so that

13. Rep. 63. 64.
Prinn's 4 Inst.
16. Cro. Car.
221. 604.

X

they

Seld. Baronage
part 1. c. 4.

2 Ld. Raym.
11 5. Reg. v.
Patty. vide the
case of Ashby &
White 2 Ld.
Raym. 938.

Salk. 19 pl. 20.
Dyer. 61.

they are the proper judges of all breaches of privilege and of which the courts of Westminster only take notice accordingly. As when in 31. *Hen. VI.* the house of lords propounded a question to the judges concerning the privileges of parliament Sir John Fortescue, in the name of his bretheren, declared, "that they ought not to make answer to that question: for it had not been used aforetime that the justices should in any wise determine the privileges of the high court of parliament. For it is so high and mighty in its nature, that it may make law: and that which is law, it may make no law: and the determination and knowledge of that privilege belongs to the lords of parliament, and not to the justices." Accordingly in the case of *Patty* and others who were committed to Newgate for a breach of privilege in commencing and prosecuting actions at common law against the late constables of Aylesbury, the court of Kings Bench by the opinions of three judges against Ld. C. J. Holt, refused to relieve or discharge them on a *Habeas corpus*; this being a parliamentary matter in which the house of commons are the sole judges. So in the case of one Ferrers, the sheriff was committed for detaining a member in execution.

BRIBERY.

B R I B E R Y.

I. Definition of, and laws to prevent bribery.

II. Cases on the question, "What is bribery in a candidate, or his agent?"

III. Of the effect of bribery, as affecting candidates on subsequent elections, and otherwise.

I. Definition of, and laws to prevent bribery.

BRIBERY is said to be committed, "when- 2 Doug. 399.
ever a person is bound to act without any view to his own private emolument, and another, by a corrupt contract, engages such person, on condition of the payment or promise of money, or other lucrative consideration, to act in a manner, which *he* may prescribe." And both parties are, by such contract, guilty of the crime.

The first instance that occurs of bribery at elections was so early as the reign of Queen Elizabeth. The entry of it in the Journals is in these words: "9 May 1571.
1 Journ. 83. Forasmuch as Thomas Longe,

the borough of Westburys in the county of gentleman, returned one of the burgeses for Wiltshire for this present parliament, being a very simple man, and of small capacity to serve in that place, hath this day in open court confessed, that he gave unto Anthony Garlande, mayor of the said town of Westbury, and unto one Watts of the same town, the sum of four pounds for that place and room of burgesship; it is ordered by this house, that the said Anthony Garlande, and the said Watts, shall immediately repay unto the said Thomas Longe the said sum of four pounds; and also that a fine of twenty pounds, be by this house assessed upon the corporation or inhabitants of the said town of Westbury, to the queen's majesty's use for their said lewd and slanderous attempt, and that the said Thomas Longe, his executors and administrators, shall be discharged against the said Anthony Garlande and Watts, their heirs, executors and administrators, of and for all bonds made by the said Thomas Longe to any person or persons, touching the discharge of the exercise of the said room or place of burgesship in any wise."

2 Apr. 1677.

Afterwards, the practice of corrupting the electors, took much deeper and more general root, insomuch, that towards the end of the reign of Charles the Second, the house found it necessary to come to the following resolution, which

which was made a standing order on the 21 October 1678, viz.

“ Resolved, That if any person hereafter to ^{9 Journ. 411.} be elected into a place for to sit and serve in the house of commons for any county, city, town, port, or borough, after the test or the issuing out of the writ or writs of election, upon the calling or summoning of any parliaments hereafter; or, after any such place becomes vacant hereafter in the time of parliament, shall, by himself or by any other in his behalf or at his charge, at any time before the day of his election, give any person or persons having voice in any such election, any meat or drink, exceeding in the true value ten pounds in the whole, in any place or places but in his own dwelling house or habitation being the usual place of his abode for six months last past; or shall, before such election be made and declared, make any other present, gift, or reward, or any promise, obligation, or engagement to do the same, either to any such person or persons in particular, or to any such county, city, town, port, or borough in general, or to or for the use and benefit of them, or any of them; every such entertainment, present, gift, reward, promise, obligation, or engagement, is by this house declared to be bribery; and such entertainment, present, gift, reward, promise, obligation, or engagement being duly proved, is, and shall be a sufficient

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ground,

ground, cause and matter; to make every such election void as to the person so offending, and to render the person so elected, incapable to sit in parliament by such election; and hereof the committee of elections and privileges, is appointed to take especial notice and care, and to act and determine matters coming before them accordingly."

7 W. 3. c. 4.

This resolution however did not prove adequate to a correction of the evil; for in 1696 the 7 W. III. c. 4. begins with stating, "That grievous complaints were made and manifestly appeared to be true in the kingdom, of undue elections of members to parliament, by excessive and exorbitant expences, contrary to the laws, and in violation of the freedom due to the election of representatives for the commons of England in parliament, to the great scandal of the kingdom, dishonourable and may be destructive to the constitution of parliaments." Therefore, "That all elections of members to parliament, may be hereafter freely and indifferently made without charge or expence," it enacts, "That no person or persons hereafter to be elected to serve in parliament for any county, city, town, borough, port, or place within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, after the teste of the writ of summons to parliament, or after the teste or the issuing out or ordering of the writ or

Candidates after the teste of the writ or after any place becomes vacant, giving or promising any present or reward to any person having vote for being elected.

writs

writs of election upon the calling or summoning of any parliament hereafter, or after any such place becomes vacant hereafter in the time of this present or of any other parliament, shall or do hereafter, by himself or themselves, or by any other ways or means on his or their behalf, or at his or their charge, before his or their election to serve in parliament for any county, city, town, borough, port, or place within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, directly or indirectly give, present or allow, to any person or persons having voice or vote in such election, any money, meat, drink, entertainment, or provision, or make any present, gift, reward, or entertainment, or shall at any time hereafter, make any promise, agreement, obligation, or engagement to give or allow any money, meat, drink, provision, present, reward, or entertainment, to or for any such person or persons in particular, or to any such county, city, town, borough, port, or place in general, or to or for the use, advantage, benefit, employment, profit, or preferment of any such person or persons, place or places, in order to be elected, or for being elected, to serve in parliament for such county, city, borough, town, port, or place."

2. "That every person and persons so giving, presenting or allowing, making, promising, or engaging, doing, acting, or proceeding, shall be, and are hereby declared and enacted, disabled and in-

Incapable to serve
in parliament.

capacitated upon such election to serve in parliament for such county, city, town, borough, port or place; and that such person or persons shall be deemed and taken, and are hereby declared and enacted to be deemed and taken no members in parliament, and shall not act, sit, or have any vote or place in parliament, but shall be and are hereby declared and enacted to be to all intents, constructions, and purposes, as if they had never been returned or elected members for the parliament."

4 Doug. 291.

2 G. II. c. 24.

But the insufficiency of the provisions of this statute, and the gross scene of corruption which had recently taken place at Beverly in Yorkshire, gave rise to the statute of 2 *Geo. II. c. 24.** which recites, "that it is found by experience, that the laws already in being have not been sufficient to prevent corrupt and illegal practices in the election of members to serve in parliament: For remedy therefore of so great an evil and to the end that all elections of members to serve in parliament may hereafter be freely and indifferently made, without charge or expence." and enacts,

Electors to take the bribery oath if demanded.

By the first section (supra p. 24.) That persons having or claiming to have a right to vote at any election, if demanded by either of the candidates or any two of the electors, shall take an oath that they have not received directly or indirectly

* As this act is directed to be read at every election and on other occasions; the whole of it, may be seen in the appendix.

any reward or promise of reward to give their vote,† and that they have not before polled at the same election.

2d. That returning officers admitting any person to be polled, without taking such oath, if demanded as aforesaid, forfeit one hundred pounds. And persons voting without taking the oath, if demanded, incur the like penalty.

Officers admitting persons to poll; and persons voting without taking the oath forfeit 100l.

7th. That persons taking money or other reward to give their vote; or persons corrupting or procuring any person to give or to forbear to give their votes,‡ forfeit five hundred pounds. And after judgment obtained against them in any of the ways mentioned in the act, *or being any otherwise lawfully convicted thereof.*§ they are forever disabled from voting at elections, and from holding any office or franchise in any city, borough, town corporate, or cinque port.

Persons taking a bribe; or corrupting others forfeit 500l.

8th. That offenders against this act, not having been before convicted, upon the discovery

Offenders discovering others, indemnified.

† And it might not be amiss, if the members elected were bound to take this oath, as well as the oath of abjuration, (6 Ann. c. 23, s. 13.) which in all probability would be much more effectual than administering it only to the electors. 1 Bl. Com. 180.

‡ The giving a bribe to forbear voting at an election, is an offence within this act, *although* the man did *not* forbear to vote, but actually voted for the opponent's candidate. *Bush v. Ralling*. Sayer 289. So, where the bribe is given to vote for A, and the voter in fact voted for B. *Sulston v. Norton*. 3 Burr. 1237.

§ From these words Mr. Douglas remarks, that the incapacities created by this act, attach upon a conviction on a prosecution for bribery, by way of information at common law, as well as when the proceeding is by an action under this statute. 4 Doug. 294.

of another offender within twelve months, are indemnified and discharged from all penalties and disabilities then incurred.||

11th. That prosecutions must be commenced within two years after the offence committed.

9 G. II. c. 38.

And the 9 *Geo. II. c. 38.* after reciting the above act; and that "prosecutions may have been, or may be commenced against persons offending against the said act, by suing out original or other writs or processes, against such persons so offending, within two years after the incurring any incapacity, disability, forfeiture, or penalty, laid or imposed by the said act, and persons so suing out such original or other writs or processes, may have delayed, or may delay to serve the same, without giving the persons against whom such original or other writs or processes may have been, or may be sued out, any notice thereof, by reason of which practice the said provision for limiting the time for the prosecution of persons offending against the said act is or may be evaded." Therefore for explaining and amending the said provision, it enacts, "That no person shall be made liable to any incapacity, disability, forfeiture, or penalty, by the said act laid or imposed, unless such person has been, or shall be

No person to be liable to any penalty by 2 G. II. c. 24. unless personally served with process in two years after the fact.

|| The discovery of an offender who is already indemnified, is not sufficient to indemnify a person prosecuted. *Lord Porchester v Petrie*, K. B. E. 33 Geo. 3.

actually

actually and legally arrested, summoned, or otherwise served with any such original or other writ or process, within the space of two years after any offence against the said act has been, or shall be committed, so as the service of any such original or other writ or process hath not been, or shall not be prevented by such person absconding or withdrawing out of this kingdom."

II. Cases on the question, "What is bribery in a candidate or his agent?"

Various cases have occurred before select committees on this branch of the law of elections; but from the general terms of the decisions, it frequently happens that no rule or principle can be deduced. In the Bristol case, bribery was charged on the sitting members, and the facts turned out to be: That a committee of gentlemen who were in the interest of Mr. Burke and Mr. Cruger, (the sitting members) had paid the fees of admission for the new freemen with money raised by subscription for that purpose, but that neither of the candidates had subscribed, or paid any of that money, and that no promise had been desired of the freemen so admitted, to vote for any one, as the condition of the fees being paid. The committee came to no express resolution on the charge, but declared the sitting members duly elected. 1 Doug. 243.

So,

3 Doug. 244.

Ibid. 258.

1 Lud. 41, 48,
and n. C. 67.

Ibid 30.

2 Doug. 137.

3 Doug. 159,
263.

So, in the Worcester case there were several charges of bribery against the sitting members; but the committee came to no resolution on any of them. It was contended in that case, that when voters, come from a distance to serve a candidate, it is not bribery to pay them a reasonable compensation for their loss of time. In the Ipswich case the counsel in their argument seem to have taken it for granted not to be bribery, when it was only a *fari* compensation for loss of time, and not a *colourable* allowance. And it seems to have been considered in the last case, not to be bribery, to pay the *travelling* charges of the out-voters.

It was stated by the counsel in the case of Sudbury that they could prove a very public distribution of money among the voters, for the two sitting members *after* the election, but as they did not say they had any proof, either of money being *given*, or *promises* of money being made by them *previous* to, or *during* the election, the committee *seemed* to think, that would not affect their seats; and no evidence was gone into on that head.

A candidate may subject himself to the disabilities and penalties attendant on bribery, either by his own acts or those of a person employed or commissioned by *him* as his *agent*. But what act does, or does not amount to proof of agency, is a question of considerable nicety, and although

it

it has been the subject of discussion in nearly every case where a charge of bribery has been gone into, yet the decisions of committees afford no rules by which such a question may be tried.—In the Cricklade case, evidence was received of Bristows acts of bribery, against Mr. Macpherson, under the following circumstances: Mr. Macpherson stood on Lord Porchester's interest, Bristow was steward to Lord Porchester, and canvassed for him together with Lord Porchester, who was then a commoner.

Petrie's Crickl.
ca. p. 507.

Yet in the Mitchell case, it was attempted to prove Mr. Hawkins, one of the petitioners, guilty of bribery, by having endeavoured to corrupt a voter, by means of one Curgenvén, said to be his agent, and two witnesses were called to prove the agency of Curgenvén;* from whom it appeared, that he canvassed the town in company with Mr. Hawkins in his presence and jointly with him; That Curgenvén was steward to Lord Falmouth, on whose interest Mr. Hawkins stood, and that he and Curgenvén resided together during the election, in the house of an agent of Lord Falmouth: after this a witness was called to prove an act of bribery by Curgenvén, which was objected to by the other side, and after the arguments of counsel, the committee resolved,

2. Lud. 39.

* How far it is necessary to go to into this proof, previous to being led in to prove an act of bribery by a supposed agent, will be seen under "Evidence."

"That

"That Curgenven's agency had not *yet* been proved."

1 Lud. 465.

In the Ivelchester case in 1784, it was proved, that about two years before the election (viz. Oct. 1782) when a dissolution was expected to take place, the voters were invited to a Mr. Lockyer's house, (inhabited by one of his relations) and when assembled in the court yard, were admitted one by one into the garden, by a man disguised in a woman's dress, and directed to go to a window of the house; from this window a hand (no other part of the person being visible) distributed to every one 30*l.* Some who did not attend received letters by the post from London, inclosing bank notes for 30*l.* and others received notes of that amount privately from an agent of Lockyer's and Cust's (which latter gentleman with Mr. Bond Hopkins, were the sitting members.) One person was refused as having no vote, being a pauper; and another as being an exciseman. Evidence was produced to shew that this distribution actually procured success to the sitting members; from which it was argued, that their seats being gained by corruption, whether their act or not, could not be maintained. But there was no other proof to connect the sitting members with this alledged bribery; than to shew, that Cust, by a participation in the presents of 30*l.* and Hopkins (who had nothing to do with the borough till the week before
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the election) by becoming accessory after the fact to all Lockyer's conduct, by canvassing upon his recommendation with his agents and tenants and by an avowed acquiescence in the effect of his money so distributed. The committee determined the sitting members duly elected. From which Mr. Luders observes, the committee must have been of opinion, either that the distribution of money was not bribery; or not such as to affect the election two years afterwards; or that the proof did not sufficiently connect the sitting members with the transaction.

III. Of the effect of bribery, as affecting candidates on subsequent elections, and otherwise.

The cases falling under this division of the title are contradictory.—Thetford. In this case 8 Journ. 145. which happened in 1699-1700, the election of Mr. Sloane had been resolved void for a breach of the statute of *W. III.* and a new writ issued, when he was re chosen, and on the other candidate's petitioning against his return, a debate arose in the house on the construction of the act, and the question being put, That the said Mr. Sloane be capable of *serving in this present parliament*; it passed in the negative. But Mr. Douglas con- 2 Doug. 413. tends that this construction of the act, is not warranted, by the words of it; and it does not appear

appear from the cases that have since arisen, that any of the committees understood the incapacity as extending beyond the immediate vacancy occasioned by the resolution which avoided the election.

3 Lud. 162.

In the case of Honiton, the committee determined, "That the committee who were appointed to consider of the former petition (describing it) having declared the election of Alexander Mc. Leod, Esq. void, (the said petition containing no other allegations than bribery and corrupt practices) it is the opinion of this committee, That the said election was declared void for bribery and corrupt practices only." And "that the said Alex. Mc. Leod was not eligible to fill the *vacancy* occasioned by the said resolution."

1 Lud. 72.

In the Kirkudbright case, Mr. Johnstone was returned for that shewartry, and Mr. Gordon petitioned: the latter was determined by a committee in 1781, to have had the majority of votes, but upon the evidence of bribery brought against him by the sitting member, the committee resolved "That Mr. Gordon had been guilty of bribery, at the last election for Kirkudbright," and that the election was void. Upon the second election the same parties became candidates, Mr. Johnstone produced an attested copy of the above resolution against his opponent, to the electors, and informed them of his incapacity thereby;

thereby; notwithstanding which Mr. Gordon was elected and returned. Mr. Johnstone petitioned against him on the ground of his incapacity, and upon the trial in February 1782, the committee for that cause avoided the election of Mr. Gordon, and seated the other who had the minority of votes.

And in the Ipswich case, the subject matter of the petition, was bribery committed by Mr. Cator, one of the sitting members, and his agents, and from the evidence adduced, the committee determined, "That neither the sitting member (Mr. Cator,) nor the petitioner, was duly elected, and that the election was void as to Mr. Cator." and the house ordered a new writ. But at the ensuing election Mr. Cator did not stand a candidate, which Mr. Luders in his notes on that case says, he has reason to think was owing to an opinion, that he had been indirectly disqualified by the resolution of the committee. 1 Lud. 21, 62, 69.

Mr. Simeon mentions that the return of General Smith, in 1777, was also declared void; his first election for the same place having been avoided for bribery. Simeon 206.

But in the second Norwich case, the committee were of a different opinion. The petitions in the first case stated, that Mr. Hobart, the sitting member, had been guilty of many notorious acts of bribery, by money and promises to the electors; and had also offended against the treating act, (7 Will. III. c. 4.) The petitions further stated that the sheriffs had admitted persons to
Y vote

vote who had no right, &c. but this part of the charge was abandoned, and they only proceeded on the evidence to disqualify the sitting member. The sitting member produced evidence to prove that the petitioning candidate Sir Thomas Beever, had also been guilty of a breach of the treating act. From the evidence adduced before the committee, they determined, "That neither the sitting member, nor the petitioner, was duly elected; and that the election was void."—Whereupon a new writ was ordered, and at the election Sir Thomas Beever and Mr. Hobart were candidates: when the latter was returned; but against that return, certain electors in the interest of Sir T. Beever petitioned the house. The petition stated the former petition; the resolutions of the committee; and in consequence thereof that Mr. Hobart was not eligible to fill that vacancy, but that Sir Thomas Beever ought to have been returned. After the minutes of the proceedings of the former committee had been offered in evidence, upon the oath of the clerk who entered them; and the counsel on both sides had argued the question, the committee determined "that the sitting member was duly elected." But previous to this determination, the committee resolved, *nem. con.* "That it does not appear to the committee from the minutes, that the last committee adjudged the seat void, on the effect of any other evidence than that of treating;" and negatived the following motion: "That the disqualification by the statute 7 & 8 Will. III. c. 4.

so far as the same relates to treating, is prospective to a future election." * * It should be observed that the last resolution and motion were not entered on the minutes of the committee; but communicated to Mr. Luders by the chairman of that committee.

Evidence of bribery committed previous to an election, which was afterwards declared void, was allowed to be given to affect a candidate's subsequent election. Thus, the committee in the Seaford case in 1785, declared the election which took place at the general election in 1784, void; and a new writ issued. Before the committee in 1786, appointed in consequence of petitions presented after such new election and against the return, a witness was allowed to relate circumstances of bribery against one of the petitioners, committed previous to the general election and applicable to that. 3 Lud. 110.

It was held in the case of the King v. Pitt, "that bribery at elections of members of parliament must always have been a crime at common law, and consequently punishable by indictment or information. Therefore where a candidate is found guilty of it, he is not only subject to the disabilities created by the treating act, but also liable to a prosecution by indictment or information. As in the case of Hindon, where it appearing to the house from the report of the select committee, that the four candidates at the election had, by themselves or their agents, been guilty of notorious bribery, in endeavouring to procure themselves to be elected; a motion 3 Burr. 1338.

4 Doug. 285.

First made 13th
Feb. 1766-1. 13
Journ. 326, 7.

was made that the following entry in the votes of the house should be read, viz. "If it shall appear that any person hath procured himself to be elected or returned a member of this house, or endeavoured so to be, by bribery or any other corrupt practices, this house will proceed with the utmost severity against such person," which being done orders were made that the Attorney General should forthwith prosecute the four candidates; and separate informations *ex officio* were filed by the Attorney General against them.

2 Doug. 403.

"Independent of the positive statutes against bribery, whenever a person is returned in consequence of an undue influence acquired by the means of bribery his election is void, and every vote purchased by bribery is also void, the person who gave his voice under such influence, being to be considered, as if he had not voted at all."

Stockbridge 10
Journ. 287.
Chippenham 10
Journ. 638.

And in the cases of Stockbridge and Chippenham, the candidates with the smaller number of votes were seated. But the authority of these cases is now doubted; for though the latter was cited in the case of Shaftesbury, it was little relied on; and they were both mentioned in the case of Worcester; where it was argued (but seemingly not with much hopes of success) that, on the authority of those cases, it is *not* necessary for a petitioner who has proved bribery on a sitting member, to disqualify a majority of his votes in order to entitle himself to the seat. But Mr. Douglas observes that a contrary doctrine seemed to be considered unquestionable.

2 Doug. 415.
Shaftesbury,
2 Doug. 303.
Worcester,
3 Doug. 260.

PETITIONS.

Wanted
P.P. 325-336

Phil. James 1838
Feb. 1700-1. 75
June 1847.

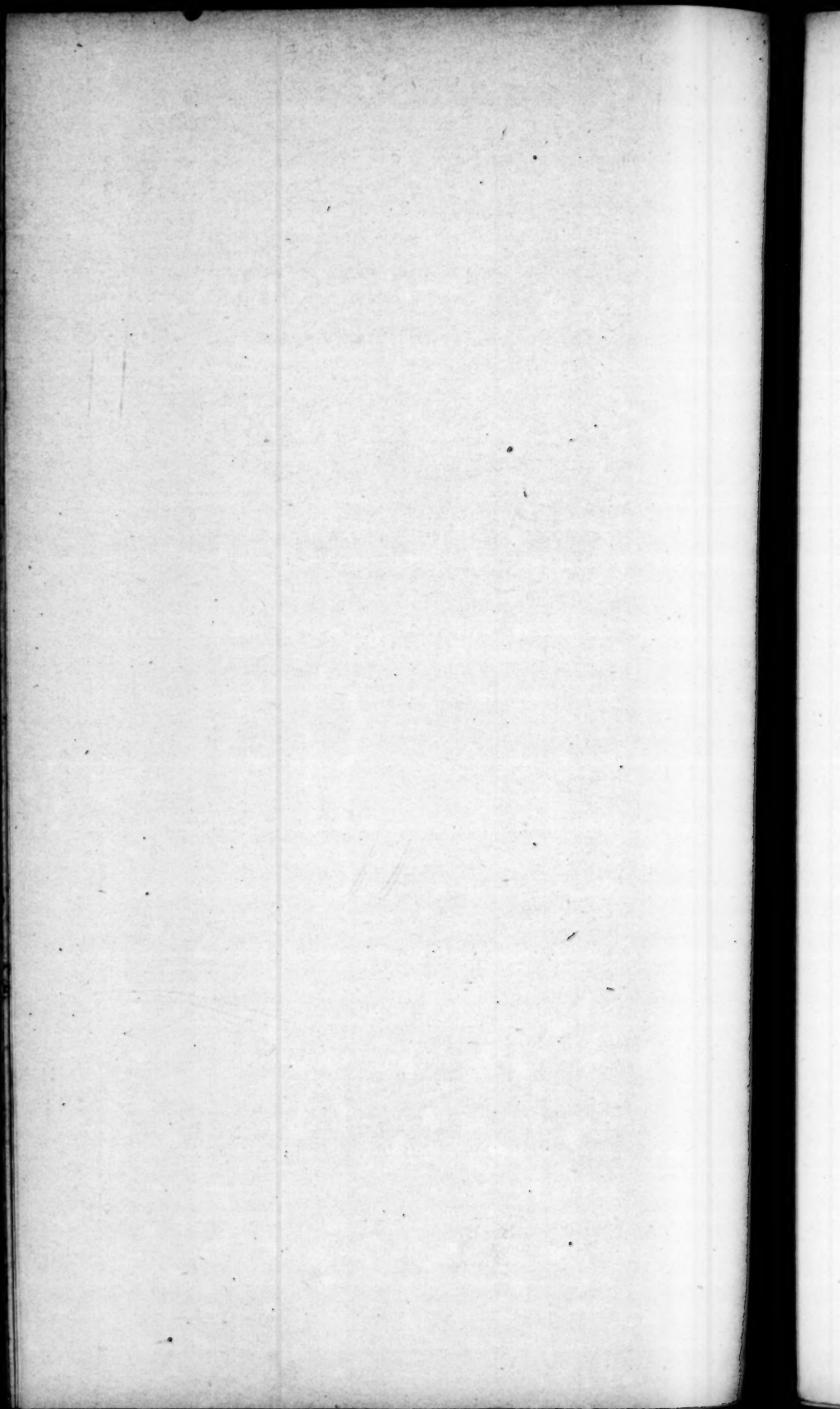
a Doug. 477.

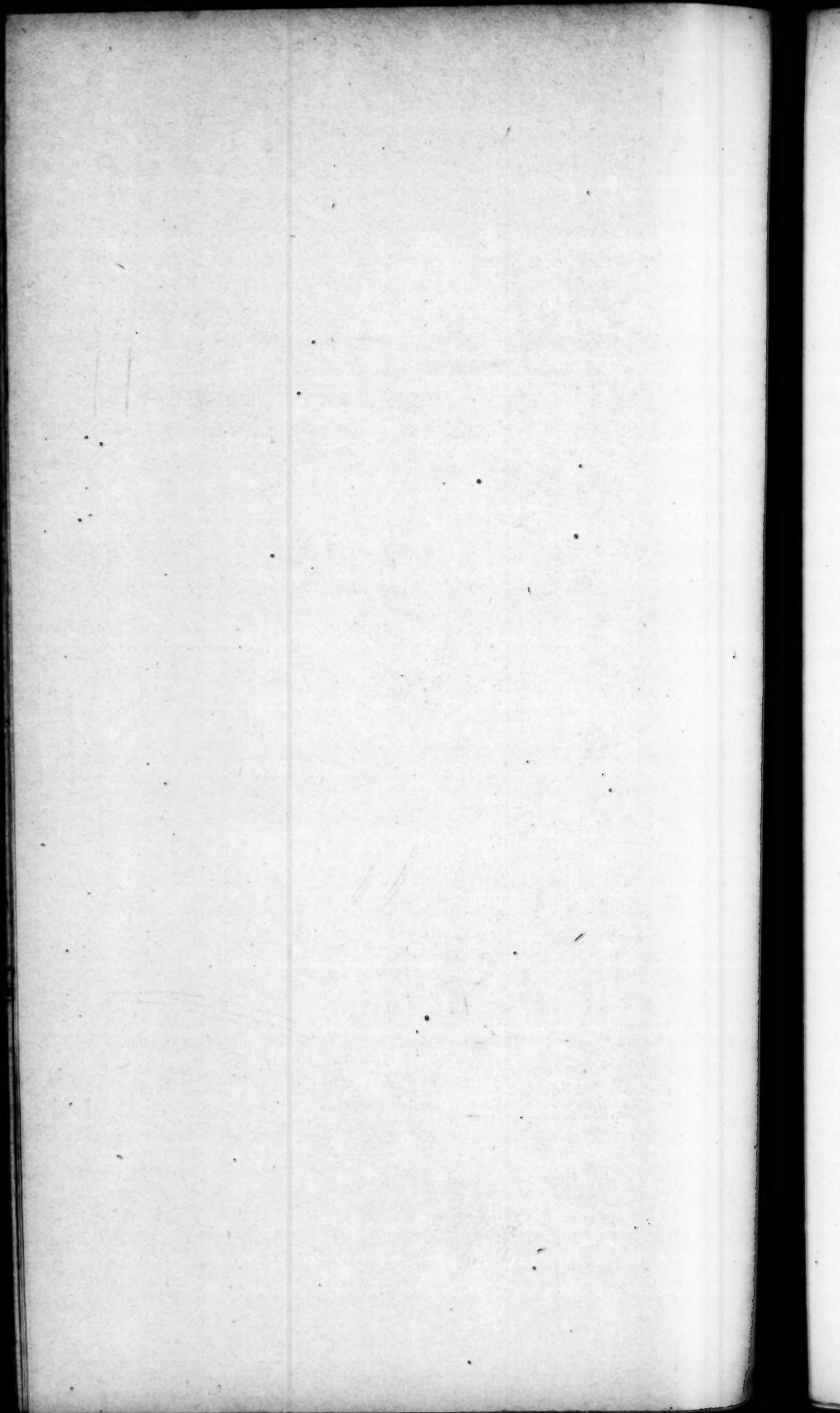
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Cleveland 18
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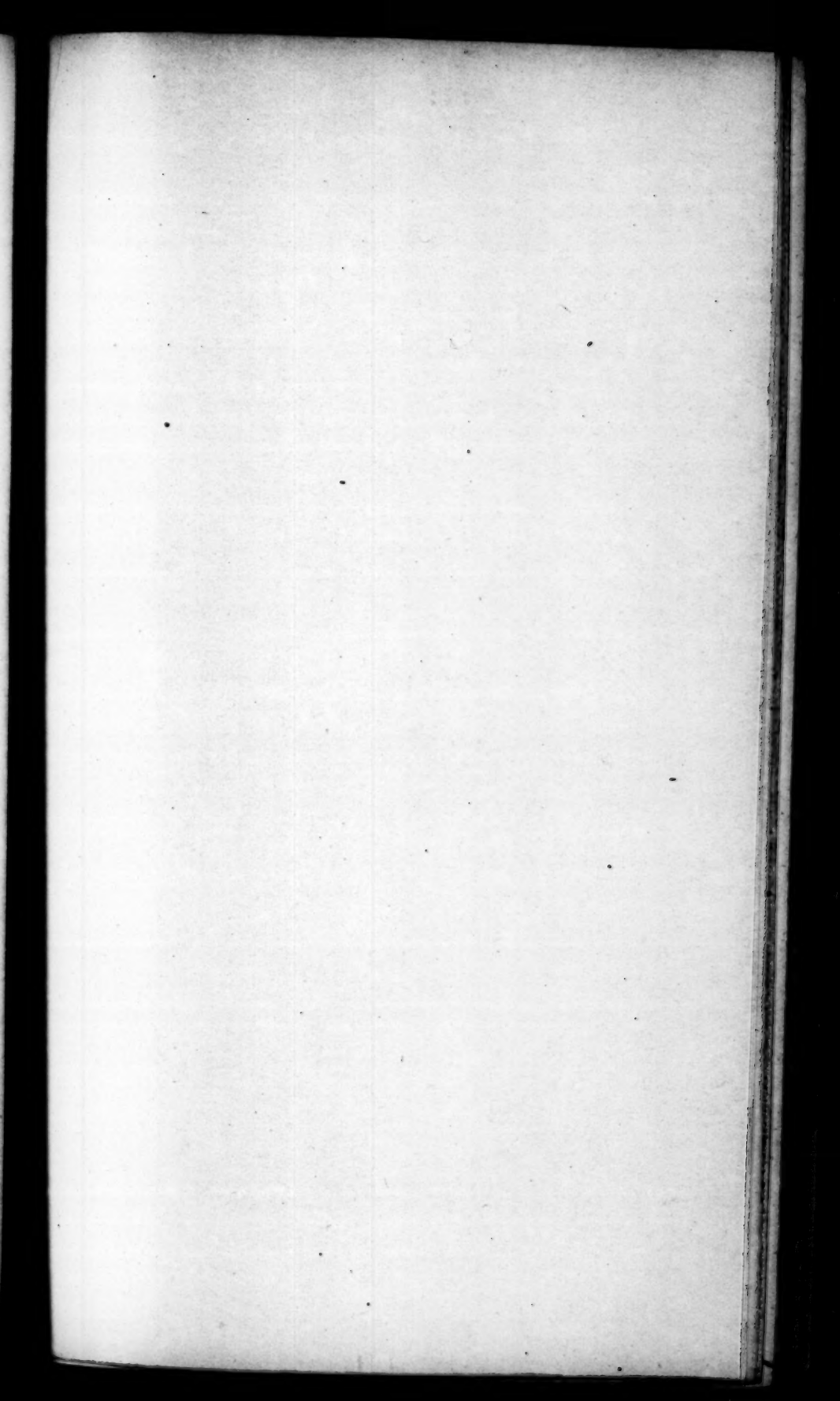
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Wentley,
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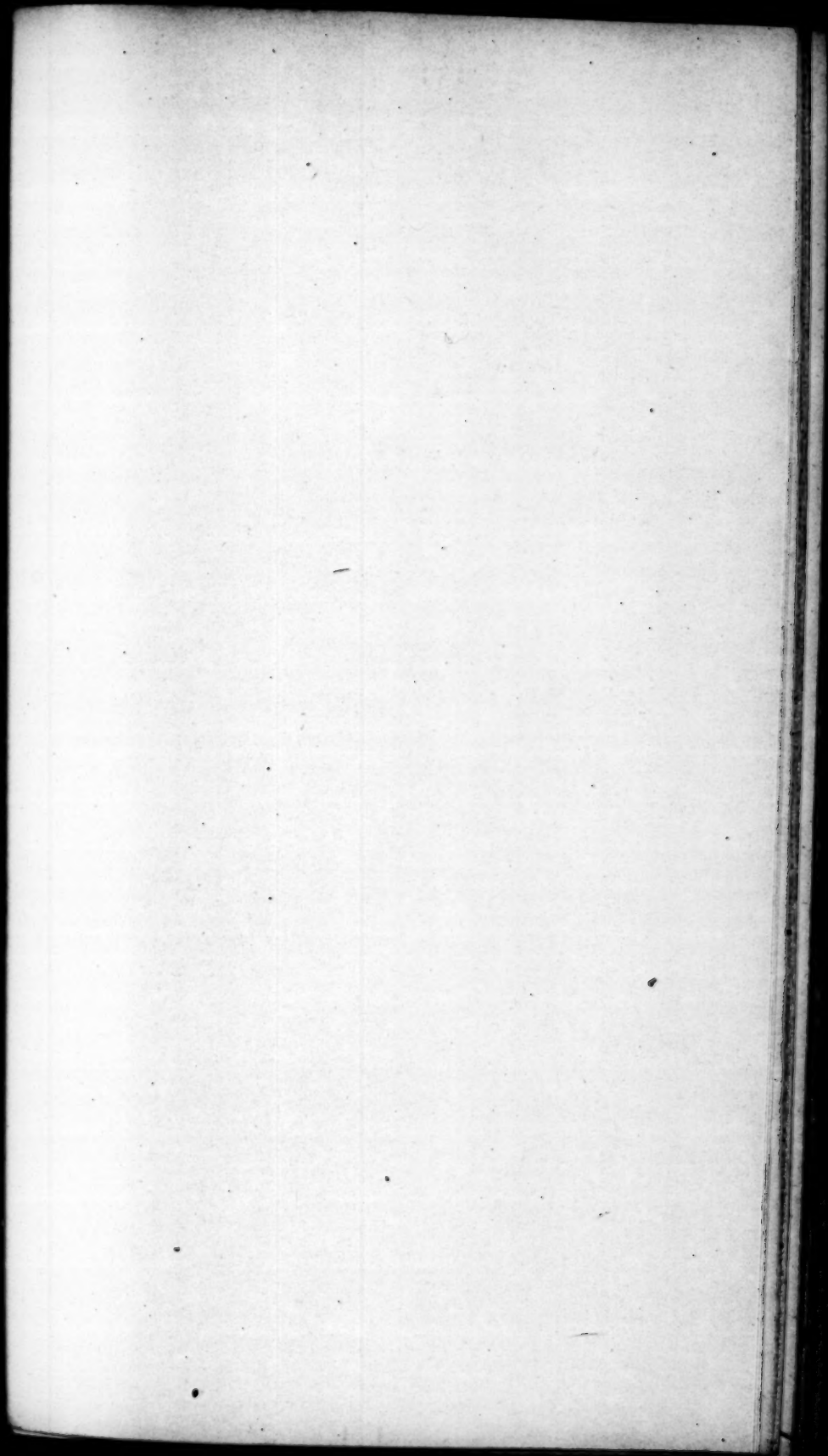
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the house should be read, viz. "If it
appear that any person has procured his
elected or returned a member of this
endeavoured to do so, by bribery or
corrupt practices, the house will proce-
the utmost severity against such person,
being done orders were made, that the
Central should send out periodically the
discovery and the information of
that by an authority to be established
the house of the positive, statutes
bribery, whenever a person is returned in
quence of an undue influence acquired
means of bribery his election is void, as
vote purchased by bribery is also void, &
who gave his vote with such influence
to be considered, as if he had not voted
and in the case of such bribery and corrup-
and candidates with the smaller number
were invalid, but the authority of these
now doubted, for though the latter was
the case of Shantbery, it was held
and they were both mentioned in the
reference, where it was argued (but it
not with much force or to the effect) that
authority of these cases, it is not neces-
person who has procured bribery or
return, to that only a majority of his
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Douglass observes that contrary doctrine
to be considered unconstitutional.

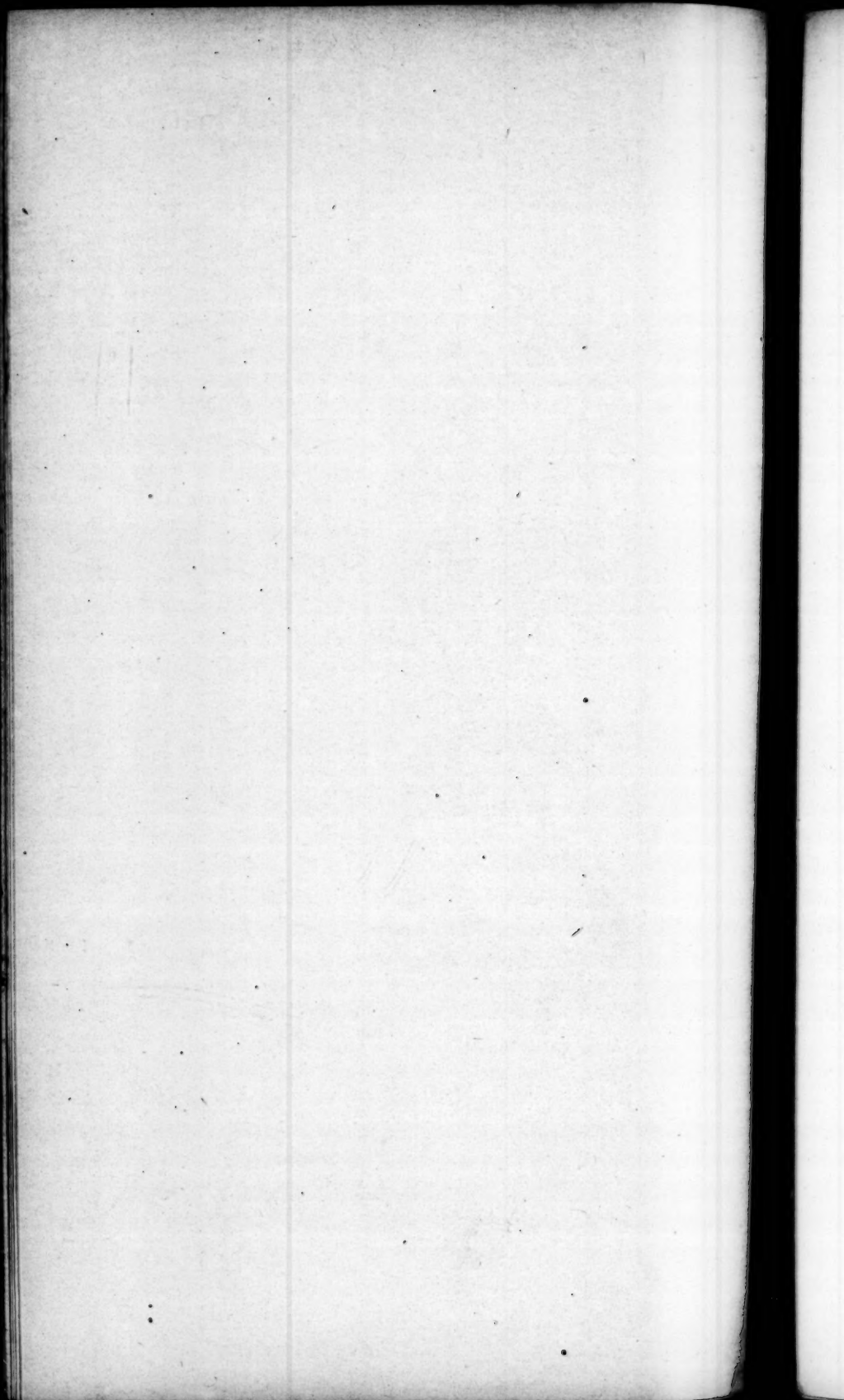
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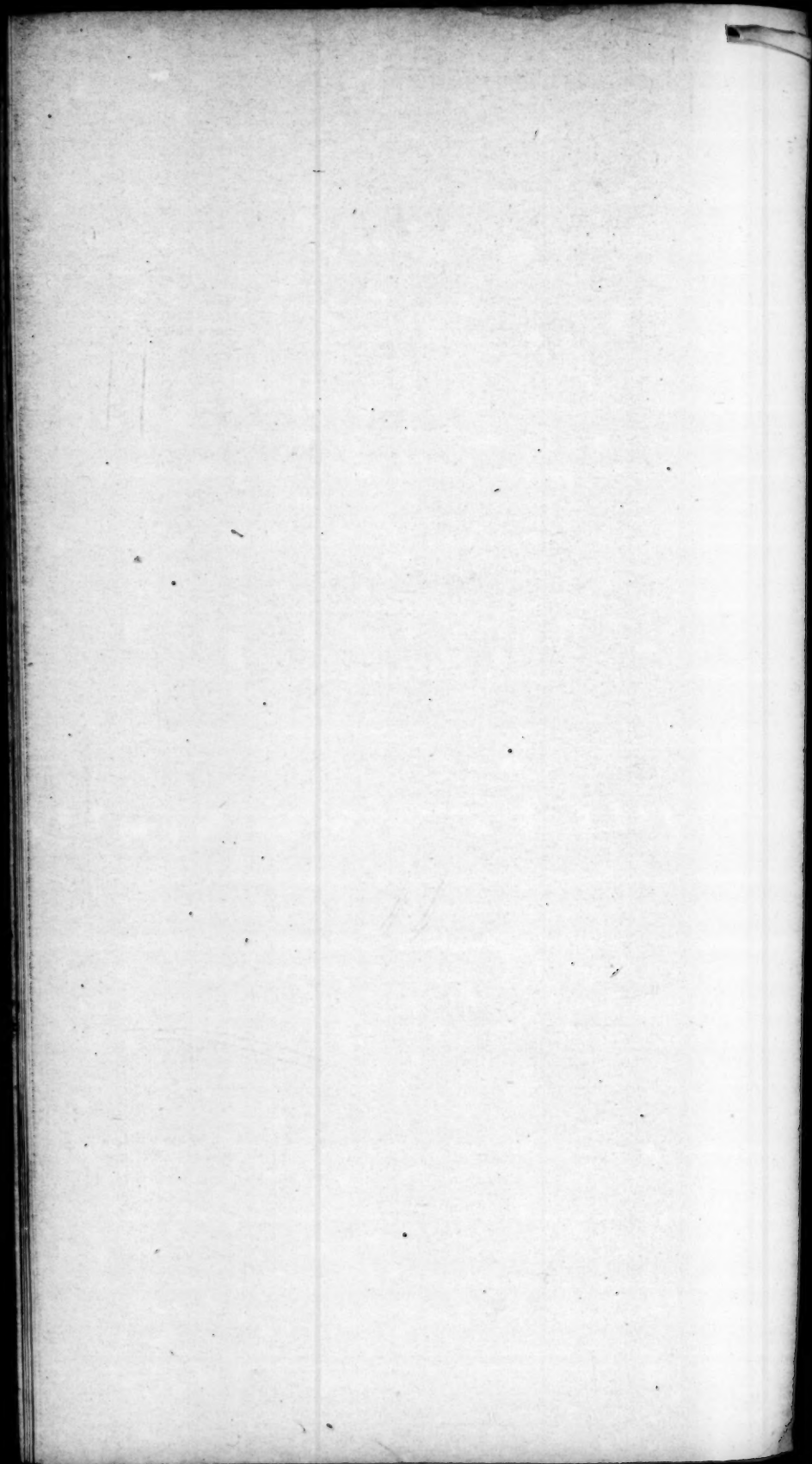












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PETITIONS.

I. Of petitions complaining of undue elections, &c.

II. Of petitions to oppose the right, &c.

III. Of renewed petitions.

IV. Of withdrawing petitions.

I. Of petitions complaining of undue elections, &c.

AS committees do not allow petitioners to go into evidence of matter not alleged in the petition*, it is therefore necessary that the petition should comprehend the whole of the petitioner's case, in a clear, though concise manner†; and the 28 Geo. 3. c. 52. §. 1. directs, that no petition shall be proceeded upon, unless the same is subscribed by a person claiming therein to have had a right to vote or be returned, or alleging himself to have been a candidate at the election.

What petitions ought to contain.

3 Doug. 15.
n. A.

* Vide infra, "Evidence."

† The petitions are in general submitted to counsel for their perusal and approbation.

By whom to be
subscribed.

28 G. 3. c. 52.
No petition
complaining
of an undue
election or re-
turn, to be pro-
ceeded upon,
unless subscribed
as therein men-
tioned.

Every petition must be signed agreeably to the first section of the last-mentioned statute of the 28 *Geo. 3. c. 52.* which enacts, "That no petition complaining of an undue election or return, or of the omission of a return, or of the insufficiency of a return, shall be proceeded upon in the manner prescribed in the said above-recited acts, [10 *Geo. 3. c. 16.* 11 *Geo. 3. c. 42.* and 25 *Geo. 3. c. 84.*] unless the same shall be subscribed by some person or persons claiming therein to have had a right to vote at the election to which the same shall relate, or to have had a right to be returned as duly elected thereat, or alleging himself or themselves to have been a candidate or candidates at such election." But care must be taken that no person signs the petition, who is intended to be examined to any fact before the committee; for by signing the petition he makes himself a party in the cause, and thereby renders his testimony inadmissible*.

When present-
ed.

By an order of the house renewed at the beginning of every new session, "all persons who will question any returns of members to serve in parliament, do question the same within 14 days next [*i. e.* after the date of the order] and so within 14 days next after any new return shall be brought in;" and they are very strict with regard to the limitation; though if the house is not actually sitting on the last day

7 Doug. 46.
n. 83.

* Vide infra, "*Evidence.*"

of the fortnight, by an equitable construction it has been held sufficient that the petition be presented the first day when the house sits after the expiration of the fortnight.

By a resolution of the house in 1774, "According to the true construction of the act of the 10th year of the reign of his present majesty, whenever a petition, complaining of an undue election, or return of a member to serve in parliament, shall be offered to be presented to the house, within the time limited by the order of the house for questioning the returns of members to serve in parliament, the said petition shall be delivered in at the table and read, without a question being put thereupon."

Proceedings of the house on their being presented.

35 Journ. 10. Petitions complaining of undue elections, &c. to be delivered in and read without a question being put.

And by another resolution in 1784, "Whenever several petitions complaining of undue elections or returns of members to serve in parliament shall at the same time be offered to be presented to the house, Mr. Speaker shall direct such petitions to be all of them delivered in at the table, where they shall be classed and read in the following order, *viz.* Such petitions as complain of double returns, in the first class; such as complain of the election or return of members returned to serve for two or more places, in the second class; such as complain of returns only in the third class; and the residue of the said petitions in the fourth class:

40 Journ. 11. When several are presented at the same time, to be classed and read in the manner mentioned.

And the names of the places to which such petitions (contained in the first class, if more than one) shall relate, shall in the first place be written on several pieces of paper of an equal size, and the same pieces of paper shall be then rolled up, and put by the clerk into a box or glass, and then publicly drawn by the clerk; and the said petitions shall be read in the order in which the said names shall be drawn: And then the like method shall be observed with respect to the several petitions contained in the second, third, and fourth classes respectively."

10 G. 3. c. 16.
A day and hour
to be appointed
by the house for
taking the same
into consider-
ation.

Speaker to give
notice, and
order to attend.

11 G. 3. c. 42.
And when there
are several par-
ties on distinct
interests, the
like notices and
orders to be
given to all.

After the petitions have been classed and read as directed by the last-mentioned resolution, the 10 Geo. 3. c. 16. s. 1. directs, "That a day and hour shall, by the said House, be appointed for taking the same into consideration; and notice thereof in writing shall be forthwith given, by the speaker, to the petitioners, and the sitting members or their respective agents, accompanied with an order to them to attend the house at the time appointed, by themselves, their counsel, or agent." And by the 11 Geo. 3. c. 42. s. 1. "If several parties, on distinct interests or grounds of complaint, shall present separate petitions, complaining of an undue election or return of a member or members to serve in parliament, the same notices and orders shall be given to all such parties, or their respective agents, as by the said act are directed to be given to the sitting members,

or

or the petitioners therein mentioned, or their respective agents."

It was provided by the second section of the 10 Geo. 3. that no petition should be taken into consideration within fourteen days after the appointment of the committee of privileges; but the 11 Geo. 3. c. 42. s. 2. has repealed that clause, and enacted, "That from henceforth no petition complaining of an undue election or return of a member or members to serve in parliament, shall be taken into consideration within fourteen days after the commencement of the session of parliament in which it is presented, nor within fourteen days after the return to which it relates, shall be brought into the office of the clerk of the crown."

11 G. 3. c. 42.

No petition to be taken into consideration within 14 days after the commencement of the session,

nor within 14 days after the return filed.

10 Geo. 3. c. 16. s. 3. "The house may alter the day and hour so appointed for taking such petition into consideration, and appoint some subsequent day and hour for the same, as occasion shall require; giving to the respective parties the like notice of such alteration and order to attend on the said subsequent day and hour as aforesaid."

10 G. 3. c. 16.
The house may alter the time on like notice and order.

When the petition complains of an undue election or return for any county, the house appoint a time (which is generally within the month) for the exchange of the lists of voters intended to be objected to by either party, pursuant to the following annual resolution, viz.

On petitions as to county elections, the house appoint a time for the exchange of lists of objected voters.

PETITIONS.

" That in all cases of controverted elections for counties in England and Wales, the petitioners do, by themselves or by their agents, within a convenient time to be appointed by the house *, deliver to the sitting members, or their agents, lists † of the persons intended by the petitioners to be objected to, who voted for the sitting members; giving, in the said lists, the several heads of objection, and distinguishing the same against the names of the voters excepted to; and that the sitting members do, by themselves or by their agents, within the same time, deliver the like lists on their part to the petitioners or their agents ‡."

Proceedings on the death, &c. of members petitioned against, and where they give notice not to defend.

28 G. 3. c. 52. In the cases specified, notice to be sent by the speaker to the returning officer of the place to which any such petition relates.

28 Geo. 3. c. 52. s. 2, " If at any time, before the day appointed for taking any such petition into consideration, the speaker of the house of commons shall be informed, by a certificate in writing, subscribed by two of the members of the said house, of the death of the sitting member or sitting members, or either of them, whose election or return is complained of in such petition, or of the death of any member or members returned upon a double return, whose election or return is complained of in such petition, or

* The house appoint a time for the exchange of the lists when the petition is read, and the exchange is generally ordered to take place before the end of a month from the reading.

† The form of a list may be seen in the Appendix.

‡ Mr. Douglas observes, that if this resolution was extended to boroughs, much time would be saved before the committee.

that

that a writ of summons has been issued, under the great seal of Great Britain, to summon any such member or members to parliament as a peer of Great Britain; or if the house of commons shall have resolved that the seat of any such member is by law become vacant; or if the said house shall be informed, by a declaration in writing, subscribed by such member or members, or either of them, as the case shall be, and delivered in at the table of the house, that it is not the intention of such member or members to defend his or their election or return; in every such case, notice thereof shall immediately be sent by the speaker to the sheriff or other returning officer for the county, borough, or place to which such petition shall relate; and such sheriff or other returning officer shall cause a true copy of the same to be affixed on the doors of the county hall or town hall, or of the parish church nearest to the place where such election has usually been held; and such notice shall also be inserted, by order of the speaker, in the next London Gazette; and the order for taking such petition into consideration shall, if necessary, be adjourned, so that at the least thirty days may intervene between the day on which such notice shall be inserted in the said Gazette, and the day on which such petition shall be taken into consideration."

A copy thereof to be affixed on the doors of the county or town hall, or nearest church; and notice to be inserted in the Gazette.

Order for taking such petitions into consideration may be adjourned.

Within 30 days after notice is so inserted in the Gazette, any voter may petition to be admitted a party in the complaint.

3. "It shall and may be lawful, at any time within thirty days after the day on which such notice shall have been inserted in the said Gazette, for any person or persons claiming to have had a right to vote at such election, or at the election of delegates or commissioners for making such election, to petition the house, praying to be admitted as a party or parties in the room of such member or members, or either of them; and such person or persons shall thereupon be so admitted as a party or parties, and shall be considered as such to all intents and purposes whatever."

Members giving notice of their intention not to defend their election, not to be admitted as parties against any such petition, &c.

4. "Whenever the member or members whose election or return is so complained of in such petition, shall have given such notice as aforesaid of his or their intention not to defend the same, he or they shall not be admitted to appear or act as a party or parties against such petition in any subsequent proceedings thereupon, any thing in the above-recited acts [10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.] to the contrary notwithstanding; and he or they shall also be restrained from sitting in the house, or voting in any question, until such petition shall have been decided upon in the manner prescribed by the above-recited acts, and by this act."

nor to sit in the house till the petition decided.

Recognizance to be entered into.

28 G. 3. c. 52.

But by the fifth section of the last-mentioned act, no "proceeding shall be had upon any petition,

petition, by virtue of the above-recited acts [10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.] or of this act, unless the person or persons subscribing the same, or some one or more of them, shall, within *fourteen days* after the same shall have been presented to the house, or within such further time as shall be limited by the house, personally enter into a recognizance to our sovereign lord the king, according to the form hereunto annexed*, in the sum of two hundred pounds, with two sufficient sureties, in the sum of one hundred pounds each, to appear before the house at such time or times as shall be fixed by the house for taking such petition into consideration, and also to appear before any select committee which shall be appointed by the house for the trial of the same, and to renew the same in every subsequent session of parliament, until a select committee shall have been appointed by the house for the trial of the same, or until the same shall have been withdrawn by the permission of the house; and if, at the expiration of the said fourteen days, such recognizance shall not have been so entered into, or shall not have been received by the speaker of the house of commons, the speaker shall report the same to the house, and the order for taking such petition into consideration shall thereupon be discharged, unless, upon matter

No proceedings to be had upon any petition, unless one of the subscribers enter into a recognizance to appear before the house at the time fixed for taking it into consideration;

and if no recognizance be duly entered into, the order for taking the petition into consideration to be discharged, unless cause shall be seen for enlarging the time, &c.

* Vide this in the Appendix.

specially

specially stated, and verified to the satisfaction of the house, the house shall see cause to enlarge the time for entering into such recognizance; and whenever such time shall be so enlarged, the order for taking such petition into consideration shall, if necessary, be postponed, so that no such petition shall be so taken into consideration till after such recognizance shall have been entered into and received by the speaker: Provided always, That the time for entering into such recognizance shall not be enlarged more than once, nor for any number of days exceeding thirty."

Recognizances to be entered into before the speaker, and the sufficiency of the sureties to be allowed of by him, on the report of the persons herein mentioned.

6. " The said recognizance shall be entered into before the speaker of the house of commons, who is hereby authorized and empowered to take the same; and the sufficiency of the sureties named therein shall be judged of and allowed by the said speaker, on the report of two persons appointed* by him to examine the same, of which two persons the clerk, or clerk assistant of the house, shall always be one, and one of the following officers, not being a member of the said house, shall be the other; (that is to say) masters of the high court of chancery, clerks in the court of king's bench, prothonotaries in the court of common pleas, and clerks in the court of exchequer; and the said persons so appointed are hereby authorized and

* Vide the form of an appointment in the Appendix.

required

required to examine the same, and to report their judgment thereupon; and are also hereby authorized to demand and receive such fees, for such examination and report, as shall be, from time to time, fixed by any resolution of the house of commons."

7. "In case where the party or parties, who are to enter into such recognizance, or his or their sureties, or either of them, shall reside at a greater distance from London than forty miles, it shall and may be lawful for such party or parties, surety or sureties, respectively, to enter into such recognizance before any of his majesty's justices of the peace; and his majesty's justices of the peace, or any of them, is and are hereby authorized and empowered to take the same; and such recognizance, being duly certified under the hand of such justice, and being transmitted to the speaker of the house of commons, shall have the same force and effect as if the same had been entered into before the said speaker: provided also that it shall and may be lawful for the persons to whom it is referred by the speaker to examine the sufficiency of such surety or sureties, to receive as evidence, in their said examination, any affidavits relating thereto, which shall be sworn before any master of the high court of chancery, or before any of his majesty's justices of the peace; and such master of the high court of chancery,

Sureties living more than 40 miles from London may enter recognizance before a justice.

Affidavits made before a master in chancery, or a justice, to be received as evidence of the sufficiency of sureties.

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chancery, or justice of the peace, respectively, is hereby authorized to administer such oath, and is authorized and required to certify such affidavit under his hand."

Recognizances of petitioners not appearing before the house at the time fixed for proceeding to the appointment of a select committee, &c. to be certified into the exchequer.

9. " If the petitioner or petitioners, who shall have entered into such recognizance, as aforesaid, shall not appear before the house by himself or themselves, or by his or their counsel or agents, within one hour after the time fixed, in pursuance of the above-recited acts, and of this act, for calling in the respective parties, their counsel or agents, for the purpose of proceeding to the appointment of a select committee; or if the select committee, appointed in pursuance of the said acts, and of this act, for the trial of such petition, shall inform the house that such person or persons did not appear before the said committee, by himself or themselves, or by his or their counsel or agents, to prosecute their said petition; or if such person or persons shall neglect to renew their said petition within four sitting days after the day of the commencement of every session of the same parliament, subsequent to that in which such petition was first presented, and until a select committee shall have been appointed for trial of the same, or until the same shall have been withdrawn by the permission of the house, in every such case such person or persons shall be held to have made default in his or their said recognizance; and the

the speaker of the house of commons shall thereupon certify such recognizance into the court of exchequer, and shall also certify that such person or persons have made default therein, and such certificate shall be conclusive evidence of such default, and the recognizance being so certified shall have the same effect as if the same were estreated from a court of law:

Provided always, That such recognizance and certificate shall in every such case be delivered, by the clerk or clerk assistant of the house of commons, into the hands of the lord chief baron of the exchequer, or of one of the barons of the exchequer, or of such officer of the court of exchequer as shall be appointed by the said court to receive the same."

Recognizance and certificate to be delivered, by the clerk or clerk assistant, into the exchequer.

Since the above act passed, the house have 11 Feb. 1789.

made the following order, viz. " That, for the due execution of an act, passed in the twenty-eighth year of the reign of his present majesty, intituled, " *An act for the further regulation of the trials of controverted elections, or returns of members to serve in parliament,*" so far as the said act respects the recognizances thereby required to be entered into, by any person having presented a petition to this house, complaining of an undue election or return, or of the omission of a return, or of the insufficiency of a return, it is expedient that the examiners

of sureties, to be appointed by virtue of the said

Examiners of sureties to attend in one of the committee rooms.

Petitioner to
give notice of
the names, &c.
of sureties.

said act should attend (for the purpose of examining the sufficiency of any surety or sureties, to be named in any such recognizance) in one of the committee rooms belonging to this house, at such time or times, within the time limited by the said act, as shall be appointed by such examiners, on application made by any such petitioner, or his agent, to the clerk or clerk assistant of this house *. And that such petitioner do give due notice† of the time and place of such intended examination, together with the names, additions, and places of abode, of such sureties, to the sitting member or members, whose election or return, is complained of by such petition, or their known agent or agents, and to every other person or persons to whom the speaker of the house of commons shall have given notice to attend, at the time when any such petition is ordered by the house to be taken into consideration, or their known agent or agents."

II. Of petitions to oppose the right, &c.

When a committee are of opinion that the merits of a petition depend wholly or in part on a question respecting the right of election, or

* The form of their appointment may be seen in the Appendix.

† Two days are to intervene between the service of the notice and the day appointed by the examiners. Vide the form of a notice in the Appendix.

of appointing a returning officer or officers, they are directed by the 28 Geo. 3. c. 52. s. 25. to require the parties to deliver to the clerk, statements in writing of the right for which they respectively contend; and the committee are to come to distinct resolutions on such statements, and report the same to the house, at the time they report their final determination on the merits*; yet the judgment of the committee on such statements of the right is not final, for the 26th section of the above act, enacts, "That it shall and may be lawful for any person or persons, at any time within twelve kalendar months after the day on which such report shall have been made to the house, or within fourteen days after the day of the commencement of the next session of parliament after that in which such report shall have been made to the house, to petition the house to be admitted as a party or parties to oppose that right of election, or of choosing, nominating, or appointing the returning officer or returning officers, who is or are to make return of such election, which shall have been deemed valid in the judgment of such committee."

28 G. 3 c. 52.

Persons may, within twelve months after the report, petition to be admitted to oppose the right of election, &c there- by established;

27. "If no such petition shall be so presented within the time above limited for presenting the same, the said judgment of such committee, on such question or questions, shall

but if no such petition shall be so presented, the judgment of the committee to be conclusive.

* Vide infra, "Committees."

be

be held and taken to be final and conclusive in all subsequent elections of members of parliament for that place to which the same shall relate, and to all intents and purposes whatsoever; any usage to the contrary notwithstanding."

Forty days to intervene between the presenting and hearing such petitions, &c.

28. "Whenever any such petition shall be so presented, a day and hour shall be appointed by the house for taking the same into consideration; so that the space of forty days at the least shall always intervene between the day of presenting such petition and the day appointed by the house for taking the same into consideration; and notice of such day and hour shall be inserted, by order of the speaker, in the next London Gazette, and shall also be sent by him to the sheriff or other returning officer for the place to which such petition shall relate; and a true copy of such notice shall, by the said sheriff or other returning officer, be forthwith affixed to the doors of the county hall, or town hall, or of the parish church nearest to the place where such election has usually been held."

Before the hearing such petitions, any person may petition to be admitted to defend such right of election, &c.

29. "It shall and may be lawful for any person or persons, at any time before the day so appointed for taking such petition into consideration, to petition the house to be admitted as a party or parties to defend such right of election, or of choosing, nominating, or appointing the returning officer or returning officers; and such

such person or persons shall thereupon be so admitted, and shall be considered as such to all intents and purposes whatever."

30. "At the hour appointed by the house for taking such petition into consideration, the house shall proceed to appoint a select committee to try the merits thereof, according to the directions of the above-recited acts, and of this act; and such select committee shall be sworn to try and determine the merits of such petition, so far as the same relate to any question or questions respecting the right of election for the place to which the petition shall relate, or respecting the right of appointing, nominating, or choosing, the returning officer or returning officers who are to make return of such election; and the determination of such committee on such question or questions, shall be entered on the journals of the house, and shall be held and taken to be final and conclusive in all subsequent elections of members of parliament for that place to which the same shall relate, and to all intents and purposes whatever; any usage to the contrary notwithstanding."

Committee to be appointed to try the merits of such petitions, whose determinations shall be conclusive.

31. "And whereas it is amongst other things enacted, by an act passed in the 2d year of the reign of his late majesty, king George the Second, intituled, An act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament, that

2 Geo. 2. c. 24. f. 4. recited.

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such votes shall be deemed to be legal which have been so declared by the last determination in the house of commons; which last determination concerning any county, shire, city, borough, cinque port, or place, shall be final to all intents and purposes whatever; any usage to the contrary notwithstanding: Be it enacted, That so much of the said act as is above recited shall be, and the same is hereby repealed, in so far only as the same relates, or might be construed to relate, to any such determination to be made in the house of commons subsequent to the passing of this act."

And the same repealed in as far as it may relate to any determination subsequent to passing this act.

Rules, &c. of recited acts to be in force with respect to committees appointed under this act.

32. "All and every the rules, regulations, authorities, or powers, prescribed and given by the above-recited acts [10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.], or by this act, to select committees for the trial of controverted elections or returns, shall be in full force and effect with respect to select committees appointed by virtue of this act for the trial of such question or questions of right as aforesaid, in as full and ample a manner, as if the same were herein repeated, and particularly and specially enacted, concerning such select committees. Provided always, That the several rules and regulations hereinbefore enacted, by which certain persons are directed to enter into recognizances, and by which certain persons are made liable to the payment of costs, in the particular

Regulations touching recognizances and payment of costs, not to apply to petitions relating solely to ques-

ticular manner, and in the several cases hereinbefore specified, shall not be construed to apply to the case of any petition presented in pursuance of this act, and relating solely to any question or questions respecting the right of election, or of choosing, nominating, or appointing a returning officer, or returning officers."

tions respecting the right of election.

III. Of renewed petitions.

If the matter of a petition should not happen to be taken into consideration by the house, in the course of the session in which it is presented, it is necessary, in order in the first place to have the benefit of the original petition, and in the next, to perform one of the conditions of the recognizance directed to be entered into by the fifth section of the 28 Geo. 3. c. 52. (supra p. 344), to renew it in the next, and every succeeding session till it is taken into consideration.

Every renewed petition must be *the same in substance* with the former; that is, it must not contain any new allegations. There is no general resolution or order for this, but it is understood to be the established law of parliament, and has been so for near a century.

What to contain.

Prof. to 3 Doug.
7. 3 Lud. 143.

A renewed petition must not be signed by any person who did not subscribe his name to the first or original petition; if it is, the house may reject it.

By whom to be subscribed.

Ibid. 470.

3 Lud. 143.

When there is any irregularity in signing or presenting a renewed petition, which is not noticed by the house, the committee will inquire into it, previous to discussing the merits. As in the case of Honiton, where the petition was at first signed by eight persons. Not having been tried in the first session it was renewed in the same form, at the commencement of the second: after which renewal, four of the parties presented a petition to the house, setting forth the substance of the former petition, and declaring that if the said petition was signed by them, the petitioners, the same was so signed *previous to, or at the commencement of the then last session* of parliament. And, that they the petitioners being conscious that the facts contained in the petition and charged against the sitting members and their agents, were void of foundation; therefore praying the house to permit the four names of the petitioners to be struck off, and withdrawn from the said petition, so complaining of the election of sitting members. This being consented to by the sitting members, the house discharged their former order for taking the first petition into consideration, *so far as the same purported to be the petition of the four now petitioners*; and gave them leave to withdraw it, as far as it might concern them. The second session expired before the petition was tried, and the original petition was renewed,

renewed, signed by only *two* of the eight who presented the first. During the third session a committee was appointed; and after the petition and orders of form had been read, the counsel were about to state the case of the petitioners: but the sitting member's counsel objected to any proceedings in support of the petition, contending, that the petition when renewed in the second session of parliament, was fraudulently and irregularly imposed upon the house for a genuine *renewed* petition; when in fact it was only a *duplicate* of the original petition, presented at the first meeting of parliament, and signed at that time; and that it was presented afterwards, without the authority of the persons signing it. And they inferred from hence, that the present petition, depending upon that fraud and irregularity, had not the proper authority of a renewed petition, and therefore ought not to be tried. The committee at first resolved, "That the counsel for the sitting member might produce evidence of the invalidity of the petition." This resolution was afterwards explained to be, "that the counsel might proceed to shew the irregularity of signing or presenting a second petition." As distinguished from the charge of corrupt conduct in the petitioners.

The annual order before-mentioned (p. 338), as to presenting original petitions, is always ex-

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pressed

When present-
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Pres. to
3 Doug. 4.

pressed in the same words; so that every renewed petition, complaining of an undue election, or return, &c., must be presented within fourteen days after the date of that order.

34 G. 3. c. 83.

Renewed petitions as to the right to be prosecuted within 14 days after every new session;

and taken into consideration within 14 days after presenting.

If not renewed within the 14 days, the judgment of committees to be final.

But a renewed petition as to the right of election, is to be presented and taken into consideration, within the time prescribed by the 34 Geo. 3. c. 83, which (after reciting the 28 Geo. 3. c. 52. supra p. 337) enacts, " That every petition, so renewed as aforesaid, shall be presented to the house within fourteen days after the day of the commencement of any such subsequent session or sessions of parliament, and not otherwise; and that whenever any such renewed petition shall be so presented, a day and hour at not less than fourteen days distance, shall be appointed by the house for taking the same into consideration; any thing in the said act to the contrary thereof notwithstanding."

2. " That if any such petition shall not from time to time, and in every session of parliament, until the same shall be taken into consideration, be so renewed within the time above limited for renewing the same, the judgment of such committee on such question or questions shall be held and taken to be final and conclusive in all subsequent elections of members of parliament for that place to which the same shall relate, and to all intents and purposes whatsoever."

The

The order in which renewed petitions are to be read, is pointed out by the following annual order of the house, viz. "Whenever several petitions complaining of undue elections and returns, shall be renewed in this session of parliament, and shall be delivered in together at the table, the said petitions shall be read in the order in which they were directed to be taken into consideration in the last session."

Order of reading renewed petitions.

4. *Of withdrawing petitions.*

After the passing of the 10 Geo. 3. c. 16. two cases occurred where application was made to the house for leave to withdraw the petitions, on the day appointed for taking them into consideration. The first was the case of the city of London, and the second that of Ivelchester. In the former the petition was allowed to be withdrawn; but in the latter the house refused it, considering it a violation of the fourth section of the 11 Geo. 3. c. 42., which directs, "that on the day appointed for taking any petition, complaining of an undue election, or return of a member or members to serve in parliament, into consideration, *the house shall not proceed to any other business whatsoever*, except the swearing of members, previous to reading the order of the day for that purpose." And a committee was therefore ballotted for and chosen; and

London,
34 Journ. 463.
Ivelchester,
4 Doug. 167.

11 G. 3. c. 42.

having retired into one of the committee rooms, they appointed a chairman; and then instead of adjourning till the ensuing morning, (as was usual in other cases *), they directed the counsel and agents to be called in. After which, the petition being read, and the counsel for the petitioners having informed the committee, that they had no evidence to offer to impeach the seats of the sitting members, the committee on the same day, reported to the house, that the two sitting members were duly elected.

38 Journ. 800.

On motion for leave to withdraw a petition, the consideration to be adjourned for at least 3 days.

At the commencement of the next session, the house passed the following resolution which they made a standing order: "That whenever a motion is made for leave to withdraw a petition, complaining of an undue election or return of a member to serve in parliament, the consideration and debate thereof, shall not be entered upon immediately, but the same shall be adjourned till such further day as the house shall think fit to appoint; provided that three days at the least shall intervene, between the day on which such motion is made, and the said further day so to be appointed."

28 G. 3. c. 52.
No petition to be withdrawn, unless the member's seat shall have been vacated.

But it has since been enacted by the 28 Geo. 3. c. 52. §. 8., "That the house shall not permit any such petition [complaining of an undue election or return, or of the omission of a re-

* Vide infra, "Committees."

turn,

PETITIONS.

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turn, or of the insufficiency of a return] to be withdrawn, except so far as the same may relate to the election or return of any member or members who shall, since the same shall have been presented, have vacated his or their seat by death, or in any other manner."

COMMITTEES.

- I. Of forming select committees.*
- II. Of their meeting, and proceedings when met.*
- III. When they may adjourn, for what time, and when dissolved.*
- IV. Of their determinations, and report to the house.*

I. Of forming select committees.

THE present * mode of trying controverted elections was first established by the 10 Geo. 3. c. 16. for which the public are indebted to the late Mr. Grenville. This act was at first only temporary, and limited to seven years; but after several causes had been tried in the method pointed out by it, the justice of the decisions (so different from former examples) rendered it almost the idol of the public, and in 1774 it was made perpetual,

14 G. 3. c. 15.

* The reader will find some useful information as to the former mode of trial, in the preface to Glanville's Reports, and in the introduction to the first volume of Mr. Douglas's valuable Reports of Election Cases.

The

The preamble recites, that "Whereas the present mode of decision upon petitions complaining of undue elections or returns * of members to serve in parliament, frequently obstructs public business; occasions much expence, trouble, and delay to the parties; is defective for want of those sanctions and solemnities † which are established by law in other trials, and is attended with many other inconveniencies:" and then directs, that whenever a petition is presented to the house, a day and hour shall be appointed for taking the same into consideration, and notices given to the parties concerned; but, by a subsequent statute, the same is not to be taken into consideration within fourteen days after the commencement of the session, nor within fourteen days after the return filed in the crown-office ‡.

10 G. 3. c. 16:
Preamble.

And for the greater dispatch and certainty in the proceeding, the sixteenth section enacts, that the names of all the members, written and rolled up as therein directed, "shall, previous to the day appointed for taking any such petition into consideration, be prepared by the said clerk, or clerk assistant, and by him put into a box or

Previous to taking petition into consideration,

clerk to put the names of the members drawn

* The provisions of this statute are extended to cases where no return has been made, and where a special return has been made. Vide 25 Geo. 3. c. 84. s. 10. infra.

† The judges were not upon oath, and they had not the power of administering an oath to the witnesses whom they examined. 1 Doug. 16.

‡ Vide supra, p. 341.

parcel,

into a box or
parcel, and at-
test the same;

speaker to seal
the same, and
attest the mak-
ing up thereof
in his presence.

Names of mem-
bers undrawn
may be read by
the clerk.

What business
the house may
do previous to
reading the or-
der of the day.

11 G. 3. c. 42.
Not to proceed
to other business
previous to
reading the or-
der of the day,
except swearing
members;

28 G. 3. c. 52.
and except, that
the house may
receive reports
from select com-
mittees;

parcel, in the presence of the speaker, together with an attestation, signed by the said clerk, or clerk assistant, purporting that the names of all the members were by him put therein the day of _____ in the year _____; which said box or parcel the speaker shall seal with his own seal, and to the outside thereof shall annex an attestation, signed by himself, purporting that the said box or parcel was, on the day of _____ in the year _____, made up in his presence, in the manner directed by this act; and that as soon as the parties shall be withdrawn as aforesaid, and before the house shall enter on any other business, any member may require, that the names of all the members which remain undrawn, shall be drawn and read aloud by the said clerk or clerk assistant."

It has already been seen that, on the day appointed for taking any petition into consideration, the house could not (by the 11 Geo. 3. c. 42. s. 4.) proceed to any other business, except the swearing of members, previous to reading the order of the day for that purpose: but they are now authorized (by the 28 Geo. 3. c. 52. s. 12.), "Previous to reading such order, to receive any report from any select committee appointed in pursuance of the above-recited acts [10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.], or of this act, and to enter the same upon their Journals, and

to give the necessary orders and directions thereupon; and that, previous to reading the said order, the clerk of the crown may be admitted to alter or amend any return, in pursuance of an order made on a preceding day, or on that day; and also that it shall and may be lawful for the house, previous to reading the said order, to postpone the same for the purpose of attending his majesty, or his majesty's commissioners, in the house of lords, in consequence of any message from his majesty, or from his majesty's commissioners, signified to the house in the usual manner."

alter or amend
any return;

attend his majesty, or his majesty's commissioners, in the house of lords;

32 Geo. 3. c. 1. "On the day appointed by the house for taking into consideration any petition complaining of an undue election or return of any member to serve in parliament, or the petition of any person or persons desiring to oppose any right of election, or the right of choosing, nominating, or appointing any returning officer, or returning officers, which shall have been deemed valid by the determination of any select committee, it shall and may be lawful for the house, previous to the reading the order or orders for taking any such petition or petitions into consideration, to receive any message or messages from the lords; and also that it shall and may be lawful for the house, on the days appointed for the trial of any articles of impeachment exhibited or to be exhibited by the commons

32 G. 3. c. 1.

and may receive any message from the lords; and, on the days appointed for the trial of articles of impeachment, may pro-

ceed to any business necessary for carrying on the prosecution.

mons before the lords in parliament, previous to the reading any such order or orders as aforesaid, to proceed to any business that may be necessary for the purpose of carrying on the prosecution of such impeachment."

36 G. 3. c. 59.

If after counting the house according to the 10 G. 3. c. 16. there be not 100 members present, or if 49, not set aside nor excused, cannot be completed, the house may proceed upon any order of the day for the call of the house, &c.

The 36 Geo. 3. c. 59. (after reciting the fourth section of the 10 Geo. 3. c. 16. the 11 Geo. 3. c. 42. the 25 Geo. 3. c. 84. and the 28 Geo. 3. c. 52.) enacts, "That if, after counting the house in the manner before mentioned, [*viz.* in the fourth section of the 10 Geo. 3. c. 16.] there shall be less than one hundred members present; or if the forty-nine members, not set aside nor excused, cannot be completed; it shall and may be lawful for the house (after the order or orders for taking any such petition or petitions into consideration shall have been adjourned to a particular hour on the following or such other day as in the said acts is directed) to proceed, in like manner as they might have proceeded if there had been no order or orders for taking any such petition or petitions into consideration on that day, upon any order of the day for the call of the house which shall have been previously fixed for that day, and to direct that the house, in pursuance of such order, be then called over, if they shall so think fit; or to direct that such order of the day for a call of the house shall be adjourned to such future day as they shall appoint; and, in either of such cases, to come to such

such resolutions, and to make such orders relating thereto, as are usually at any time made in such cases, or as to them shall seem meet: and in case no order of the day for a call of the house shall have been previously fixed for that day, then that it shall and may be lawful for the house to order, that the house shall be called over on such future day as they shall appoint, and to make such orders relating thereto as they shall think necessary; and, in any case, to make such other orders as to them shall seem expedient, for enforcing the attendance of the members on the business of the house; and that the house shall then adjourn to the same day to which such order or orders shall have been adjourned, and so from time to time as occasion shall require: and in case no such proceedings with respect to any call of the house, or other the matters before mentioned, shall take place; or if, in the course of those proceedings, the house shall be adjourned for want of members, the house shall be deemed and taken, and shall be declared to be adjourned to the same day to which such order or orders shall have been adjourned: provided always, that in case the forty-nine members not set aside nor excused cannot be completed, it shall not be lawful for the house to proceed upon any of the matters before mentioned, until the door of the house is unlocked, and the parties, their counsel and agents, are withdrawn from the bar."

But if such 49 members cannot be completed, the house not to proceed until the door is unlocked, and the parties, &c. withdrawn.

2. "The

When petitions are to be taken into consideration, the house not to proceed to other business, until there be due attendance, except calling over the house, &c.

2. "The house shall not, on any day when any such petition or petitions shall be ordered to be taken into consideration, proceed to any other business (other than such as may, by virtue of any act of parliament, be proceeded on previous to the reading of the order of the day for taking any such petition or petitions into consideration) until there be an attendance of one hundred members, or until the number of forty-nine members, not set aside nor excused, shall be completed; other than and except to the calling over of the house, adjourning such call, or ordering a call of the house on a future day; and making such orders relative thereto as they shall think fit, or such other orders as to them shall seem expedient, for enforcing the attendance of the members on the business of the house in the manner before mentioned."

Forming the select committee.

10 G. 3. c. 16. Serjeant at arms, before the reading of the order of the day for appointing a committee, to require the attendance of the members.

10 Geo. 3. c. 16. s. 4. "At the time appointed for taking such petition into consideration, and previous to the reading the order of the day for that purpose, the serjeant at arms shall be directed to go with the mace to the places adjacent, and require the immediate attendance of the members on the business of the house *; and that after his return the house shall be counted, and if there be less than one hun-

* But the house have expressly ordered, "That no person do presume to solicit the attendance of members of this house, when the matter of any petition complaining of an undue election or return is ordered to be taken into consideration." 33 Journ. 726.

dred members present, the order for taking such petition into consideration shall be immediately adjourned to a particular hour on the following day (Sunday and Christmas-day [*and now Good Friday, by the 28 Geo. 3. c. 52. s. 10*] always excepted); and the house shall then adjourn to the said day; and the proceedings of all committees, subsequent to such notice from the said serjeant, shall be void; and on the said following day, the house shall proceed in the same manner, and so from day to day till there be an attendance of one hundred members at the reading of the order of the day to take such petition into consideration."

At his return the house to be counted, and, for want of 100 members, to adjourn

till 100 be present.

28 Geo. 3. c. 52. s. 11. "If on the day immediately preceding any of the three following days, that is to say, *Christmas-day, Whit Sunday, or Good Friday*, after reading the order of the day for taking any such petition as aforesaid into consideration, it shall be found that there are not one hundred members present, or that the number of forty-nine members not set aside or excused cannot be completed, it shall and may be lawful for the house, if they shall think fit, any thing in the above-recited acts [*10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.*] to the contrary notwithstanding, to direct that the said order shall be adjourned for any number of days, and the house shall then immediately be adjourned to the hour and day to which such order shall be so adjourned."

28 G. 3. c. 52. But if, on the day preceding *Christmas-day*, &c. there shall not be 100 members present, or 49, not excused, cannot be completed, the order for taking any such petition into consideration, and the house, may be adjourned for any number of days.

10 G. 3. c. 16.
In presence of
100, the peti-
tioners, counsel,
&c. to be order-
ed to the bar.

28 G. 3. c. 52.
If petitioners do
not appear
within an hour
after the time
fixed for ap-
pointing select
committees, the
order for taking
such petitions
into considera-
tion to be dis-
charged.

Regulations
where no party
appears to op-
pose the peti-
tions.

10 Geo. 3. c. 16. s. 5. "If after summoning the members and counting the house as afore-
said, one hundred members shall be found to be
present, the petitioners, by themselves, their
counsel or agents, and the counsel or agents of
the sitting members, shall be ordered to attend at
the bar." But by the 28 Geo. 3. c. 52. s. 13.
"If, within one hour after the time fixed in
pursuance of the above-recited acts [10 Geo. 3.
c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.]
and of this act, for calling in the respective par-
ties, their counsel or agents, for the purpose of
proceeding to the appointment of a select com-
mittee, the petitioner or petitioners, or some one
or more of them who shall have signed any such
petition, shall not appear by himself or them-
selves, or by his or their counsel or agents, the
order for taking such petition into consideration
shall thereupon be discharged, and such petition
shall not be any further proceeded upon in the
manner directed in the above-recited acts, and
in this act."

And, by section 14. "If, within one hour
after the time so appointed as afore-
said, the *sitting member* or *sitting members*, or other party
or parties opposing the petition, shall not appear
by himself or themselves, or by his or their coun-
sel or agents, or if, at the time so appointed as
afore-
said, there shall be no party before the house
opposing the petition, the house shall proceed to
appoint

appoint a select committee to try the merits of such petition," in the manner after mentioned.

10 Geo. 3. c. 16. s. 5. After the petitioners, 10 G. 3. c. 16.
 their counsel and agents, and the counsel and agents of the sitting members, are in the house; or if none of the latter parties attend within the hour, " then the door of the house shall be locked, and no member shall be suffered to enter into or depart from the house, until the petitioners, their counsel or agents, and the counsel or agents for the sitting members, shall be directed to withdraw, as hereinafter is mentioned; and when the door shall be locked as aforesaid, the order of the day shall be read, and the names of all the members of the house, written or printed on distinct pieces of parchment or paper, being all as near as may be of equal size, and rolled up in the same manner, shall be put in equal numbers into six boxes or glasses, to be placed on the table for that purpose, and shall there be shaken together; and then the clerk or clerk assistant attending the house shall publicly draw out of the said six boxes or glasses, alternately, the said pieces of parchment or paper, and deliver the same to the speaker, to be by him read to the house; and so shall continue to do, until forty-nine names of the members then present be drawn."

When the several parties are in the house,

the names of the members to be put into six boxes or glasses; to be drawn alternately, and read by the speaker, till 49 be drawn.

10 Geo. 3. c. 16. s. 6. " If the name of any member who shall have given his vote at the election

Members excluded from serving.

B b 2

election

10 G. 3. c. 16.

Voting members
at the election,
or complain-
ants,

to be set aside.

All above 60
years old ex-
cused,

or those who
have served on
select commit-
tees in the same
session,

unless the num-
ber who have
not served be
insufficient.

Members ex-
cused shall not
be deemed to
have served.

election so complained of as aforesaid, or who shall be a petitioner, complaining of an undue election or return, or against whose return a petition shall be then depending, or whose return shall not have been brought in 14 days, shall be drawn; his name shall be set aside, with the names of those who are absent from the house."

7. "If the name of any member of sixty years of age or upwards be drawn, he shall be excused from serving on the select committee, to be appointed as hereinafter is mentioned, if he require it, and verify the cause of such requisition upon oath*."

8. "If the name of any member who has served in such select committee during the same session be drawn, he shall, if he require it, be excused from serving again in any such select committee, unless the house shall, before the day appointed for taking the said petition into consideration, have resolved, that the number of members who have not served on such select committee, in the same session, is insufficient to fulfil the purposes of this act, respecting the choice of such select committee."

9. "No member, who after having been appointed to serve in any such select committee shall, on account of inability or accident, have

* The form of the oath is this: "The matter alleged by you and now taken down and read, as an excuse for not serving on this committee, is the truth. So help you God."

been

been excused from attending the same throughout, shall be deemed to have served on any such select committee."

10. "If any other member shall offer and verify upon oath any other excuse, the substance of the allegations so verified upon oath shall be taken down by the said clerk, in order that the same may be afterwards entered on the journals, and the opinion of the house shall be taken thereon; and if the house shall resolve, that the said member is unable to serve, or cannot without great and manifest detriment serve, in such select committee, he also shall be excused from such service."

Members verifying other excuses, allegation to be entered.

And if the house resolve that they are unable, &c.

are to be excused.

11. "That instead of the members so set aside and excused, the names of other members shall be drawn; who may, in like manner, be set aside or excused, and others drawn to supply their places, until the whole number of forty-nine members, not liable to be so set aside or excused, shall be complete."

Instead of whom, others to be drawn to complete the number 49, &c.

15. "If upon the drawing out the name of any member by lot, as aforesaid, the said petitioners or sitting members, or their agents, shall declare, that such member is intended to be one of the two nominees to be nominated by them respectively, and if such member shall consent to such nomination, the name of such member so drawn by lot shall be set aside, and, unless objected to as aforesaid, he shall serve as

Petitioners, &c. declaring that any member drawn is intended for a nominee,

and member consenting thereto,

he is to serve as such,

and another to
be drawn to
supply his
place ;

but on neglect
of nomination,

deficiencies to
be supplied by
lot ;

leaving always
15 as a select
committee.

11 G. 3. c. 42.
If, at the time of
drawing, 49
members cannot
be completed,

the house to
proceed in
manner directed
by 10 G. 3.

such nominee, and the name of another member shall be drawn to supply his place, to complete the number of forty-nine members to be drawn by lot ; and if the said petitioners or sitting members, or their agents, shall not respectively nominate a member then present, who shall be admitted according to the directions of this act, then the want of such nomination shall be supplied, by drawing out, instead thereof, the name of one or two members, as the case shall require ; who shall be drawn by lot in the like manner, and subject to the like objections and excuses as the other forty-nine members already drawn by lot, and shall be added to the lists of the said forty-nine members, and shall be liable to be struck off in the same manner ; leaving always the number of fifteen members in the whole, and no more, as a select committee for the purposes aforesaid."

11 Geo. 3. c. 42. s. 3. " If, at the time of drawing by lot the names of the members, in manner prescribed by the said act [10 Geo. 3. c. 16.], the number of forty-nine members, not set aside nor executed, cannot be completed, the house shall proceed in the manner they are directed by the said act to proceed, in case there be less than one hundred members present at the time therein prescribed for counting the house ; and so from day to day, as often as the case shall happen."

After

After the forty-nine members are complete, the 10 *Geo.* 3. c. 16. s. 11. directs, that " the petitioners, or their agents, shall then name one, and the sitting members, or their agents, another *, from among the members then present, whose names shall not have been drawn, to be, added to those who shall have been so chosen by lot."

Appointing nominees.

10 G. 3. c. 16. Petitioners to name one, and sitting members another.

12. " That either of the members so nominated shall or may be set aside, for any of the same causes as those chosen by lot; or shall, if he requires it, be excused from serving on the said select committee; and the party who nominated the member so set aside or excused shall nominate another in his stead, and so continue to do as often as the case shall happen, until his nominee is admitted."

Who may be set aside, for the like causes as those chosen by lot,

or excused,

and others named.

This statute not having pointed out the method of proceeding where there happened to be more than two parties on distinct interests, the 11 *Geo.* 3. c. 42. s. 6. enacts, " That in such case, neither of the said parties (there being more than two) shall be permitted to name a member to be added to the members so drawn by lot as aforesaid; but that as soon as the list of thirteen members shall be returned

11 G. 3. c. 42. When more than two parties on distinct interest, neither of the parties to name a nominee;

* It is thought by many to be a defect in the constitution of select committees, that the parties should have the power of naming them, on account of the supposed partiality, and almost unavoidable bias, which men of the greatest integrity are liable to, in favour of the party by whom they are appointed. 1 Dougl. 87.

but when the list is returned to the house, the 13 members to withdraw;

and, within one hour, report the names of such two members.

In case such two members shall be set aside, they shall choose others, until two are not objected against.

Where the nominees are directed to be named, no member to depart till the time of meeting of the said select committee is fixed.

by the parties to the house, such thirteen members shall immediately withdraw, and shall by themselves choose two members then present in the house, whose names shall not have been drawn, to be added to the said thirteen members; and shall, within one hour from the time of their withdrawing, report the names of such two members to the house; which two members shall be liable to be set aside, on the like objections for which nominees may be set aside by virtue of the said act; [10 Geo. 3. c. 16.] and in case such two members, or either of them, shall be set aside for any of the causes aforesaid, then the said thirteen members shall choose one or two other members, as the case shall require, until two members are chosen, against whom none of the objections to nominees mentioned in the said act shall be taken and allowed; and that the names of such two members shall be then added to the said list of thirteen members; and all the said fifteen members shall be sworn at the table, and they shall be the select committee appointed for the purposes expressed in this and the said former act."

7. "That where the said nominees are by this act directed to be named by the said thirteen members, no member present at the time of the ballot shall depart from the house until the time for the meeting of the said select committee shall be fixed."

10 Geo.

10 Geo. 3. c. 16. s. 13. "As soon as the said forty-nine members shall have been so chosen by lot, and the two members to be added thereunto shall have been so nominated as aforesaid, the door of the house shall be opened, and the house may proceed upon any other business*; and lists of the forty-nine members so chosen by lot shall then be given to the petitioners, their counsel or agents, and the counsel or agents for the sitting members, who shall immediately withdraw, together with the clerk appointed to attend the said select committee; and the said petitioners and sitting members, their counsel or agents, beginning on the part of the petitioners, shall alternately strike off one of the said forty-nine members, until the said number shall be reduced to thirteen; and the said clerk, within one hour at farthest from the time of the parties withdrawing from the house, shall deliver in to the house the names of the thirteen members then remaining; and the said thirteen members, together with the two members nominated as aforesaid, shall be sworn at the table, well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence†; and shall

Reducing the lists.

10 G. 3. c. 16. After the 49 are chosen, the door to be opened, and the house may proceed on other business.

Lists of the 49 to be then given to the petitioners, &c.

who, with the clerk, are to withdraw,

and strike off one alternately, till the number be reduced to 13.

Clerk within one hour to deliver a list of them;

and they with the nominees to be sworn a select committee.

* But the 14th sect of this act directs, "That the house shall continue sitting; and the said 51 members, so chosen and nominated, shall not depart the house till the time for the meeting of the said select committee shall be fixed."

† The oath is administered in this form :--*You, and each of you, shall well and truly try the matter of the petition of A. B. referred to you, and a true judgment give, according to the evidence. So help you God.*

be

be a select committee to try and determine the merits of the return or election appointed by the house to be that day taken into consideration.

11 G. 3. c. 42.
If on complaint
of undue elec-
tion there shall
be more than
two parties on
distinct interest,

each party shall
strike off a
member from
the 49 suc-
cessively, until
reduced to 13.

And by the 11 *Geo. 3. c. 42. s. 6.* "If, on a complaint by petition of an undue election or return, there shall be more than two parties before the house, on distinct interest*, or complaining or complained of upon different grounds, whose right to be elected or returned may be affected by the determination of the said select committee, each of the said parties shall successively strike off a member from the forty-nine members to be chosen by lot, until the same number be reduced to thirteen, in the same manner as by the said act [10 *Geo. 3. c. 16.*] is directed for the striking off a member alternately by the parties therein mentioned; and the lists of the forty-nine members chosen by lot shall for this purpose be given to all the said parties, and the order in which the said parties shall so strike off the said members shall be determined by lot, after they are withdrawn from the bar."

Where the sitting members, or other parties opposing the petition, do not appear within one hour after the time appointed for taking the

* Where there is a separate petition from certain electors, or persons claiming a right to vote, in the interest of the unsuccessful candidate, they are not considered as distinct parties, so as to strike off any names from the 49.

petition into consideration, or if there be no party before the house opposing the petition, the 28 Geo. 3. c. 52. s. 14. directs, " That the names of forty-nine members shall be drawn, in the manner prescribed in the above-recited acts, but in reducing the list of such names to thirteen, the place of a party opposing the petition shall be supplied by the clerk appointed to attend the said committee, who shall, as often as it shall come to his turn as supplying the place of the party opposing the petition to strike out a name, strike out that name which then shall be first in the said list; and in every case where the party opposing the petition would be empowered, by the above-recited acts, to nominate one member to be added to the said thirteen, the said thirteen shall, from among the persons present in the house at the time of drawing the names of the members, choose one person to supply the place of the member to have been so nominated, in the same manner as is directed by the above-recited act made in the 11th year of his majesty's reign, in the case where there are more than two parties on distinct interests."

28 G. 3. c. 52.
Regulations for
reducing the
lists where no
party appeals
to oppose the
petition.

15. " That the same method of reducing the list of members drawn to thirteen, and of nominating a member to be added to the thirteen remaining on the said list, shall be respectively followed, whenever any party shall waive his right

The foregoing
method of re-
ducing the list
to 13 members,
&c. to be fol-
lowed, when
any party shall
waive his right
to do it.

right of striking off names from the said list, or of nominating a member to be added to the said thirteen."

Regulations
where no re-
turn, or a spe-
cial return has
been made.

25 G. 3. c. 84.

Where no re-
turn shall be
made,

or if a special
return has been
made,

any elector
may petition;

and thereupon
a day and hour
to be appoint-
ed, and notice
of the meeting
of committees
to be given to

"The statutes of 10th and 11th of George the third, not having made any provision for the hearing and determining any petition, unless the same complained of an undue election or return; the 25 Geo. 3. c. 84. s. 10. enacts, "That if, upon any writ or writs to be issued for the election of any member or members to serve in parliament, no return shall be made to the same on or before the day on which such writ is made returnable; or if a writ shall have been issued during any session or prorogation of parliament, and no return shall be made to the same within fifty-two days after the day on which such writ bears date; or if the return made in either of such cases shall not be a return of a member or members, according to the requisition thereof, but contain special matters only concerning such election; it shall and may be lawful for any person or persons, having had, or claiming to have had, a right to vote at such election, or claiming to have had a right to be returned as duly elected thereat, who shall think himself or themselves aggrieved, to petition the house of commons concerning the same; and upon such petition being presented, a day and hour shall be appointed for taking the same into consideration, and notice thereof in writing shall be

be forthwith given by the speaker to the petitioners, and to the returning officer or officers by whom such return ought to have been made, or shall have been made, accompanied with an order to him or them to attend the house at the time appointed, by himself or themselves, his or their counsel or agents; and a select committee shall be appointed according to the directions of the said two recited acts, for regulating the trial of controverted elections; which committee shall try and determine whether any, and which of the person or persons named in such petition ought to have been returned, or whether a new writ ought to issue; which determination shall be final to all intents and purposes; and the house being informed thereof by the chairman of the said select committee, shall order the same to be entered in their journals, and give the necessary directions for ordering a return to be made, or for altering the return if made, or for the issuing a new writ for a new election, or for carrying the said determination into execution, as the case may require."

the petitioners
and returning
officers.

II. "That all and every the rules, regulations, authorities, and powers, given or prescribed by either of the said recited acts for regulating the trial of controverted elections, with respect to select committees to be appointed by virtue of the said acts, or either of them, shall

Regulations of
10 G. 3. c. 16.
and 11 G. 3.
c. 42. extended
to this act.

be

COMMITTEES.

be in full force and effect with respect to select committees to be appointed by virtue of this present act, in as full and ample a manner as if the same were herein repeated and particularly and specially enacted concerning the same."

When returning officers cannot be found, or do not appear at committees, other persons may be appointed to appear in their stead, and where more than one petition is presented, the house to determine whether the returning officer is to strike off from the list of members drawn by lot.

12. "That if the returning officer or officers, by whom such return ought to have been made, or has been made, cannot be found so as to be served with the notice or order hereinbefore mentioned, or being served shall not appear by himself or themselves, his or their counsel or agents, at the day or time appointed for taking such petition into consideration, it shall and may be lawful for the house to permit or authorise any person to appear in the stead of him or them; and in case there shall be more petitions than one presented, complaining of such return, or omission of a return, on distinct interests, or complaining upon different grounds; the house shall determine from the nature of the case, whether the returning officer or officers, or persons appearing in the stead of him or them, shall, together with such petitioners, be entitled to strike off from the list of members drawn by lot, in the manner directed by the said act, passed in the 11th year of the reign of his present majesty, in the case where there shall be more than two parties before the house, or whether such list shall be reduced by the parties severally presenting the said petitions only."

2. *Of their meetings, and proceedings when met.*

10 Geo. 3. c. 16. s. 13. "The house shall order the said select committee to meet * at a certain time to be fixed by the house, which time shall be within twenty-four hours of the appointment of the said select committee, unless a Sunday, or Christmas-day, [or Good Friday,] shall intervene; and the place of their meeting and sitting shall be some convenient room or place adjacent to the house of commons or court of requests, properly prepared for that purpose †."

When and where to meet.

10 G. 3. c. 16.
House to order them to meet in 24 hours.

17. "The said select committee shall, on their meeting, elect a chairman from among such of the members thereof as shall have been chosen by lot; and if in the election of a chairman there be an equal number of voices, the member whose name was first drawn in the house shall have a casting voice; so likewise, in case there should ever be occasion for electing a new chairman, on the death, or necessary absence of the chairman first elected."

Electing a chairman.

To be elected out of the members chosen by ballot; and, in case of an equality, the member first drawn to have a casting voice.

* It is customary for the committee to meet immediately on their being sworn, and, after electing their chairman, adjourn to the following day, when they proceed to business, and generally sit from ten to three.

† The committee in the Downton case were of opinion, that, by the words of this clause, they were not authorised to adjourn to the lodgings of one of the witnesses, who lay dangerously ill, and whose evidence was material for the sitting members. 1 Lud. 280.

The

Proceedings in
the cause.

Vide Pref. to
1 Doug.

22 Journ. 498.

2 G. 2. c. 24.

21 Journ. 89.

“ The manner of proceedings before a committee is this: the clerk reads the petition or petitions; the last determination of the house on the right of election, if there is any, and then the standing order of January 16, 1735-6, which is in these words, *viz.* Ordered, That the counsel at the bar of this house, or before the committee of privileges and elections, be restrained from offering any evidence touching the legality of votes for members to serve in parliament for any county, shire, borough, cinque port, or place, contrary to the last determination in the house of commons, which determination by an act passed in the second year of his majesty's reign, intituled, “ *An act for the more effectual preventing bribery and corruption in the election of members to serve in parliament,*” is made final, to all intents and purposes whatsoever; any usage to the contrary notwithstanding.”

And if there are different persons claiming to be returning officers of any place, then the resolution of the house relating thereto (if there is any) is read.

If there is a double return, the resolution of the 18th March, 1727-8, *viz.* Ordered, “ That in all cases of double returns, where the same shall be controverted, either at the bar of this house, or in committees of privileges and elections, the counsel for such person who shall be first named in such double return, or whose
return

turn shall be *immediately* annexed to the writ or precept, shall proceed in the first place."

And if the case should require it, statements in writing are to be delivered in to the clerk of the committee, in pursuance of the 28 Geo. 3.

c. 52. s. 25., viz. "That whenever any such select committee, appointed to try the merits of any such petition as aforesaid, shall be of opinion that the merits of such petition do wholly or in part depend on any question or questions which shall be before them respecting the right of election for the county, city, borough, district of burghs, or other place to which such petition shall relate, or respecting the right of choosing, nominating, or appointing the returning officer or returning officers, who is or are to make return of such election, the said committee in such case shall require the counsel or agents for the several parties, or if there shall be none such before them, shall then require the parties themselves, to deliver to the clerk of the said committee, statements in writing of the right of election, or of choosing, nominating, or appointing returning officers, for which they respectively contend."

In what cases statements in writing to be delivered in.

28 G. 3. c. 52. When the merits of petitions depend on question respecting the right of election, &c. statements of such right to be delivered in writing.

"*The right of choosing, nominating, or appointing the returning officer or officers, who is or are to make return of such election.*" In the Oakhampton case, there were two returns, the one by the mayor, the other by the portreeve

1 Frazer, 71.

C c

of

of the borough. Statements in writing being given in agreeably to the above act; that by the counsel for Messrs. St. Ledger and Ladbroke was, that they apprehended the legal returning officer to be the mayor, chosen by the capital and assistant burgeses of the borough according to its charter: on the part of Messrs. Anderson and Townson, that the returning officer was the portreeve for the time being. The counsel for the former gentlemen objected to this statement, because it did not mention how the portreeve was appointed; and they contended, that by the allegation in their petition, that Hawkes (the portreeve) had made a return, *under colour of the office of portreeve*, they meant to submit the question of fact to the committee, whether or not he was legally chosen? as well as the question of law, whether, supposing him to be properly nominated, he had a right to act as he had done? That this statement was expressly required by the act itself; the sense of which seemed to be, that the returning officer could not be better described than by stating, what description of people had a right to appoint him. But to this it was answered, that the act seemed not to point to those cases where the dispute is to which of two offices the right of making returns is incident; but to those cases where the question is, which of two persons shall fill a particular office? That the committee were now to decide, which of the officers

was

was to have the right contended for? And not, whether those offices were properly filled? And that the petitions, by alleging that Hawkes had claimed certain rights under colour of the office of portreeve, admitted that, in point of fact, he was duly appointed to the office. The committee declared, that they did not think it was necessary to state the right of choosing, nominating, and appointing the portreeve.

The number of counsel to attend the committee for each party are limited, by an order of the house of the 25th November 1695. Which was renewed at the beginning of every session, till 3d January 1701-2, when it was made a standing order, *viz.* "It is ordered, that it be an instruction to the committee of privileges and elections, that they do admit but *two* counsel of a side in any cause to be heard before them." But as it sometimes happens, that the counsel named, are engaged in another committee sitting at the same time; the committee will allow a third gentleman to attend and act in the absence of either of the two. When there is but one petitioner, or when there are two, and they unite in the same petition, they are allowed but two counsel. And in like manner, when the election of two sitting members is complained of on the same grounds, they have only two counsel. In those cases where there is a separate petition from certain electors,

What number
of counsel may
attend.

2 Journ. 336.

13 Journ. 648.

1 Doug. 56.
Worcester,
3 Doug. 338.

or persons claiming a right to vote in the interest of the unsuccessful candidate, they are sometimes allowed *one* counsel; but are not considered as distinct parties, so as to be entitled to strike off any names from the 49, under the 6th sect. of the statute of 11 Geo. 3. c. 42.—When there are two petitioning candidates, who present distinct petitions, containing different allegations, *each* of them is entitled to *two* counsel. So, where the cases and interests of the two sitting members are distinct, each of them is likewise allowed *two* counsel; but as this separation of interest may sometimes be a mere stratagem in order to gain an opportunity of striking off two for one from the 49, the house must be satisfied that there is a real difference in the cases, before they will allow of it; and on this account it was refused in the case of Shaftesbury, and the house divided upon it in the case of St. Ives; but one of the sitting members waived the privilege of striking off separately in the last case*. If the petition complains of the returning officer having acted at the election, in a manner that, if proved, may materially affect him in its consequences, the committee will allow him one counsel to attend.

Worcester,
3 Doug. 238.
Ipswich,
1 Lud. 463.

Milborne Port,
Phillips, 220.
Steyning,
2 Frazer, 395.

* Mr. Douglas recommends as the best rule for the house to follow, in cases where the sitting members desire to separate their interest, and to appear by separate counsel, to trust to the candour of the counsel.
3 Doug. 86.

Afterwards,

Afterwards, the senior counsel for the petitioners * opens their case, stating what facts they mean to prove, and the points of law they mean to rely upon.

Opening the
petitioners'
case.

1 Doug. 60.

Then the evidence whether written or oral is proceeded on; the oath is administered to every witness by the clerk of the committee, who is authorized by the 29th sect. of the 10 Geo. 3. c. 16. to administer the oaths directed to be taken before the committee †; and the form of the oath is this: viz.

Producing evi-
dence.

"The evidence you shall give to this committee shall be the truth, the whole truth, and nothing but the truth. So help you God."

Oath to wit-
ness

But no person is allowed to be examined as a witness who has been in the committee room during the examination of any other witness ‡;

* The petitioner, being the person who affirms the matter in issue to be tried by the committee, is the person who begins to open the case and give evidence in support of it; but where there is a double return, then the method pointed out by the order of the house of the 18th March 1727-8, (supra p. 384), is to be attended to. In some cases, where there are returns by different persons, claiming to be returning officers, the committee determine the question as to the return, first, and then the person who is named in the return, by that officer whom they determine to be the legal returning officer, is considered as the sitting member for the purpose of directing the mode of proceeding before the committee. Vide the cases of Downton (3 Lud. 173), and Oakhampton (1 Fraser, 151).

† And by the same section, persons guilty of wilful and corrupt perjury are liable to the pains and penalties inflicted by law in other cases.

‡ A paper is in general pasted on the door of the committee room to this purpose; but when a cause lasts for a number of days or weeks, the effect of it is in a great measure lost, as the witnesses have several ways of hearing what has been given in evidence without being present themselves.

Oloster, 16.

except such person is an agent * to one of the parties: and even an agent was not allowed to be examined before the Gloucestershire committee, touching any particular vote, if he had been present in court during any part of the time that such vote was under discussion, except as to proving the execution of deeds or writings of any kind.

1 Doug. 61.

When the examination of a witness lasts more than one day, or if the same witness is called more than once on different days, the oath is administered anew every day.

3 Doug. 169.

The questions put to the witness, and the answers given to such questions, are taken down in writing by the committee-clerk †: and, in the case of Ivelchester, the committee made it a rule to order the clerk to read over to every witness the minutes of his evidence, that he might set right any mistakes made in taking it down.

Ibid.

After a witness has been examined, cross-examined, and re-examined, in the usual way, the members of the committee put such questions as they think proper; or if any new questions occur to the counsel on either side, as they cannot then regularly put them themselves, they

* In order to avoid dispute, and prevent any advantage being taken by either side, it is advisable, before the evidence is gone into, to exchange lists of those persons whom either party think come under that description, as objections may *then* be made to any person named in the lists.

† These minutes of the evidence are copied for the agents on both sides, and delivered out to them daily by the clerk.

suggest

suggest them to one of the members of the committee, who asks them of the witnesses.

The evidence for the petitioners being closed, the junior counsel on that side sums it up; then the senior counsel for the sitting members, after remarking upon the evidence which has been produced, opens the case against the petitioners*, and produces evidence to support their case, in the same manner as is before mentioned respecting the petitioners' evidence. After the evidence is gone through, the junior counsel on the same side sums it up, and then the senior counsel for the petitioners replies to the whole.

If any objection is taken to the admissibility of any part of the evidence, both the counsel on the side from whence the objection comes speak to it, and being answered by both the counsel on the other side, the senior replies; and then, if any difficulty appears to the committee on the subject, the court is cleared, and the counsel, when they are called in again, receive from the chairman the directions of the committee, whether the evidence is to be admitted or rejected. 1 Doug. 64.

Where the case for the petitioners consists of several questions, and the determination of one would render the others unnecessary, as, for instance, if the objections to a sitting member are,

* From the cases of Seaford (3 Lud. 112.), and Cirencester (2 Fraser, 451.), which will be noticed under title "*Evidence*," it seems necessary for the sitting member's counsel to open the whole of the facts and evidence intended to be adduced before the committee.

Bristol, 1 Doug.
246. Dorchester,
ib. 349. Bedford,
2 Doug. 71.
Lanerk, ib. 369.
North-Berwick,
ib. 426. Bedfordshire,
2 Lud. 386.

first, that he was not eligible, and, second, that he had not the majority of legal votes *, the committee will, with the consent of parties, divide the case into separate questions, as was done in the cases mentioned in the margin; and in some cases without consent, as in the Bedfordshire case, the committee, even contrary to the consent of the counsel for the sitting member, directed them to proceed on the votes of the different hundreds, and make separate cases of each hundred: it was afterwards found mutually convenient, the committee directing the petitioners' counsel to give timely notice of the order in which they meant to take the hundreds. The proceedings on each separate question are the same as have been described as to the cause itself. If the determination of the first question is sufficient for the decision of the cause, the others are not proceeded upon.

III. When they may adjourn, for what time, and when dissolved.

10 G. 3. c. 16. Select committee not to adjourn for more than 24 hours, without leave.

10 Geo. 3. c. 16. s. 19. "The said select committee shall sit every day (Sunday and Christmas-day [and Good Friday] only excepted), and shall never adjourn for a longer

* It was the general practice in the old committee of elections, and at the bar of the house, when the right of election was in dispute, to separate that question from the rest of the cause, and determine upon it first. Vide the Journals passim.

time than twenty-four hours, unless a Sunday, or a Christmas-day, [or a Good Friday,] intervene, without leave first obtained from the house, upon motion, and special cause assigned, for a longer adjournment: and in case the house shall be sitting at the time to which the said select committee is adjourned, then the business of the house shall be stayed, and a motion shall be made for a further adjournment for any time to be fixed by the house, not exceeding twenty-four hours, unless a Sunday or Christmas-day [or Good Friday] intervene."

If the house then sitting, business to be stayed,

and motion made for adjournment.

20. "Where the time prescribed by this act for the meeting, sitting, or adjournment of the said select committee, shall by the intervention of a Sunday or Christmas-day [or Good Friday] exceed twenty-four hours, such meeting, sitting, or adjournment, shall be within twenty-four hours from the time of appointing or fixing the same, exclusive of such Sunday or Christmas-day [or Good Friday]."

Sunday or Christmas-day [or Good Friday] intervening, not to be deemed included.

But by the 11 Geo. 3. c. 42. s. 5. "If the select committee shall have occasion to apply or report to the house, in relation to adjournment of the said select committee, the absence of the members thereof, or the non-attendance or misbehaviour of witnesses summoned to appear, or appearing before them, and the house shall be then adjourned for more than three days, the said

11 G. 3. c. 42. Manner of adjourning the select committee, on their having occasion to report when the house are adjourned.

said select committee may also adjourn to the day appointed for the meeting of the house."

10 G. 3. c. 16.
Select commit-
tee-man not to
be absent with-
out leave,

nor committee
to sit, till all
who have not
leave be met.

On failure of
meeting within
one hour, a fur-
ther adjourn-
ment to be
made, and re-
ported with the
cause thereof.

Chairman, at
next meeting, to
report absen-
tees,

who are to be
directed to at-
tend next
sitting,

10 Geo. 3. c. 16. s. 21. "No member of the said select committee shall be allowed to absent himself from the same, without leave obtained from the house, or an excuse allowed by the house at the next sitting thereof, on special cause shewn and verified upon oath; and the said select committee shall never sit until all the members to whom such leave has not been granted, nor excuse allowed, are met; and in case they shall not all meet within one hour after the time to which the said select committee shall have been adjourned, a further adjournment shall be made in the manner as before directed, and reported, with the cause thereof, to the house *."

22. "The chairman of the said select committee shall, at the next meeting of the house, always report the name of every member thereof who shall have been absent therefrom without such leave or excuse as aforesaid; and such member shall be directed to attend the house at the next sitting thereof, and shall then be ordered to be taken into the custody of the serjeant at

* In the Gloucestershire case, one of the members was absent on the 34th day, and the committee accordingly adjourned; but on the next day they resolved, 11 to 2, to proceed to business previous to reporting to the house the absence of such member: and when the chairman reported the absentee, he acquainted the house that the committee had proceeded to business, and no objection was made. *Gloster, 91.*

arms attending the house, for such neglect of his duty, and otherwise punished or censured at the discretion of the house; unless it shall appear to the house, by facts specially stated and verified upon oath, that such member was, by a sudden accident, or by necessity, prevented from attending the said select committee."

and be censured
or punished at
discretion,

unless absence
proved unavoid-
able.

23. "If more than two members of the said select committee shall on any account be absent therefrom, the said select committee shall adjourn in the manner hereinbefore directed; and so, from time to time, until thirteen members are assembled."

If 13 do not at-
tend, committee
to adjourn;

24. "In case the number of members able to attend the said select committee shall, by death or otherwise, be unavoidably reduced to less than thirteen, and shall so continue for the space of three sitting days, the said select committee shall be dissolved, and another chosen to try and determine the matter of such petition in manner aforesaid; and all the proceedings of the said former select committee shall be void and of no effect."

if less for 3 days,
then to be dis-
solved, and an-
other chosen;

and past pro-
ceedings to be
void.

In the Bedfordshire case, in 1785, a committee having made considerable progress in the cause, and being reduced to thirteen by the indisposition of two of the members, it was thought necessary to apply for an act to enable the house to authorize the select committee to proceed, in case they were reduced to eleven.

23 G. 3. c. 17.

But

28 G. 3. c. 52.
If a committee
shall have sat for
business 14
days, 12 mem-
bers may pro-
ceed therein;

and if 25 days,
11 members
may proceed.

28 G. 3. c. 52.
Committee not
to be dissolved
by the prorog-
ation of parlia-
ment.

But now, by the 28 *Geo. 3. c. 52. s. 17.*
“ Whenever any committee shall have sat for business fourteen days, not including those days on which they shall have adjourned on account of the absence of any member, nor including Sunday, Christmas-day, or Good Friday, it shall and may be lawful for them to proceed to business, if a number of members not less than twelve be present; and, in such case, the committee shall not be dissolved by reason of the absence of the members, unless the number of members able to attend the same shall, by death or otherwise, be unavoidably reduced to less than twelve, and shall so continue for the space of three sitting days; and whenever any committee shall in like manner have sat for business twenty-five days, it shall and may be lawful for them to proceed to business, if a number of members not less than eleven be present; and, in such case, the committee shall not be dissolved by reason of the absence of the members, unless the number of members able to attend the same shall, by death or otherwise, be unavoidably reduced to less than eleven, and shall so continue for the space of three sitting days.”

28 *Geo. 3. c. 52. s. 33.* “ Whenever it shall happen that parliament shall be prorogued while any select committee shall be sitting for the trial of any such petition as aforesaid, and before they shall have reported to the house their determination

ation thereon, such committee shall not be dissolved by such prorogation, but shall be thereby adjourned to twelve of the clock on the day immediately following that on which parliament shall meet again for the dispatch of business (Sundays, Good Friday, and Christmas-day, always excepted); and all former proceedings of the said committee shall remain and continue to be of the same force and effect as if parliament had not been so prorogued; and such committee shall meet on the day and hour to which it shall be so adjourned, and shall thenceforward continue to sit from day to day, in the manner provided in the above-recited acts [10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84.] and in this act, until they shall have reported to the house their determination on the merits of such petition."

IV. Of their determinations, and report to the house.

By the 10 Geo. 3. c. 16. s. 18. the committee "shall try the merits of the return, or election, or both; and shall determine, by a majority of voices of the said select committee, whether the petitioners, or the sitting members, or either of them, be duly returned or elected, or whether the election be void; which determination

10 G. 3. c. 16.
Committee to
determine
finally.

House there-
upon to confirm
or alter the
return,

or issue writ for
new election.

Other resolu-
tions may be
reported at same
time,

and the house
may make order
thereon.

When commit-
tee choose to
deliberate, the
room may be
cleared.

mination shall be final between the parties to all intents and purposes : and the house, on being informed thereof by the chairman of the said select committee, shall order the same to be entered in their Journals, and give the necessary directions for confirming or altering the return, or for the issuing a new writ for a new election, or for carrying the said determination into execution, as the case may require."

25. And " if the said select committee shall come to any resolution other than the determination above mentioned, they shall, if they think proper, report the same to the house for their opinion, at the same time that the chairman of the said select committee shall inform the house of such determination ; and the house may confirm or disagree with such resolution, and make such orders thereon as to them shall seem proper."

27. " Whenever the said select committee shall think it necessary to deliberate amongst themselves upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition referred to them as aforesaid ; as soon as the said select committee shall have heard the evidence, and counsel on both sides relative thereunto, the room or place wherein they shall sit shall be cleared *(if they shall*

shall think proper *) while the members of the said select committee consider thereof; and all such questions, as well as such determination, and all other resolutions, shall be by a majority of voices; and if the voices shall be equal, the chairman shall have a casting voice."

Questions to be determined by a majority.

Chairman to have a casting vote.

28. "No such determination as aforesaid shall be made, nor any question be proposed, unless thirteen members shall be present [except in the cases mentioned in the seventeenth section of the 28 Geo. 3. c. 52. s. 17. *supra*, p. 396]; and no member shall have a vote on such determination, who has not attended during every sitting of the said select committee."

No determination unless 13 present,

nor any member to vote who has not attended every sitting.

28 Geo. 3. c. 52. s. 18. "Every such committee, at the same time that they report to the house their final determination on the merits of the petition which they were sworn to try, shall also report to the house whether such petition did or did not appear to them to be frivolous or vexatious; and that they shall in like manner report, with respect to every party or parties who shall have appeared before them in opposition to such petition, whether the opposition of such

What the report is to contain.

28 G. 3. c. 52. Committees, in their reports, to mention whether petitions, &c. appear to be frivolous or vexatious;

* One of the members in the Pontefract committee proposed, that they should deliver their sentiments in open court; but this was not agreed to; and the custom of clearing the court is uniformly followed. And, in some committees, it is a rule for the members to be upon honour not to disclose any gentleman's opinion; but the Gloucestershire committee, after they had adopted that rule for three or four days, resolved unanimously, that every member of the committee should be at liberty to declare any other member's opinion, if he chose to do so. Gloster, 2.

party

COMMITTEES.

party or parties respectively did or did not appear to them to be frivolous or vexatious; and that if no party shall have appeared before them in opposition to such petition, they shall then report to the house, whether such election or return, or such alleged omission of a return, or such alleged insufficiency of a return, as shall be complained of in such petition, according as the case shall be, did or did not appear to them to be vexatious or corrupt *."

and when statements in writing are delivered in,

the committee to report, with their determination on the merits of the petition, their judgment on such statements.

Report to be entered in the Journals, and notice thereof sent to the returning officer, &c.

The twenty-fifth section of the last-mentioned act directs, that if the committee shall be of opinion that the merits of any petition depends, in the whole or in part, on any question respecting the right of election, or the right of appointing the returning officer, they are to require statements in writing to be delivered by the several parties; and, in that case, "the committee shall come to distinct resolutions on such statements; and shall, at the same time that they report to the house their final determination on the merits of such petition, also report to the house such statement or statements, together with their judgment with respect thereto; and such report shall thereupon be entered in the Journals of the house, and notice thereof shall be sent by the speaker to the sheriff or other returning officer of the place to which the same shall relate; and a true copy of such notice shall,

* Vide infra, title "Costs."

by such sheriff or other returning officer, be forthwith affixed to the doors of the county hall or town hall, or of the parish church nearest to the place where such election has usually been held; and such notice shall also be inserted, by order of the speaker, in the next London Gazette."

This report on the statements delivered in is, by the subsequent clauses in this act, to be final and conclusive at all subsequent elections, unless a petition is presented to oppose the same within twelve calendar months after the report to the house, or within fourteen days after the commencement of the next session *.

* Vide supra, p. 353.

EVIDENCE.

I. Of the general rules of evidence.

II. Of vivâ voce evidence.

III. Of written evidence.

I. Of the general rules of evidence.

On whom the
onus probandi
lies.

³ Doug. 220.

IN the course of the proceedings before select committees, it often becomes a question on whom the *onus probandi* lies. In the case of Cardigan it was agreed, that of the votes for the sitting member, "the entries respecting a certain number in the corporation book, and on the poll, agreed both in the names and descriptions." The counsel for the petitioner contended, that as there were such number of persons of the same name in Wales, and as the petitioner's agents were not suffered to inquire into the identity of those voters during the poll, it was necessary for the counsel for the sitting member to prove their identity. But the committee resolved that the *onus* of disproving the identity lay upon the counsel for the petitioners.

⁴ Doug. 70.

In the second Cricklade case, proof was given of the *possession* of several voters, whose
title

title to vote was denied, as belonging to any of the three classes, in whom the right of voting existed, viz. as freeholders, copyholders, or leaseholders. This was *primâ facie* evidence of their being freeholders; but it appeared, by a check book, which had been produced on the part of the petitioners, that those very persons had claimed as leaseholders, and had been rejected on the ground of that title being insufficient to give a right to vote. The petitioners contended, that if their being freeholders was controverted on the ground of their having *claimed* as leaseholders, it was incumbent on the sitting member to produce the leases. On the other side it was insisted, that as it appeared from the check book, which the counsel for the petitioners themselves had delivered in as evidence, that the persons in question had claimed as leaseholders, it was incumbent on *them* to produce the leases. There was no determination on the question, but the sense of the committee seemed to be, that the petitioners must produce the leases, which they afterwards did; thereby waiving the point in dispute.

Joseph Walker was objected to in the Gloucestershire case, as not being rated to the land-tax. In the rate, the voter's tenant's name appeared for "late Hollister's." The objection was made by the petitioner. The committee resolved nine to five, "that to establish

Gloster, 26.

the vote of J. W. his name not appearing in the rates, it will be necessary for the sitting member to prove that Hollister's land is the same for which he polled, or included therein."

Gloster, 39.

In the same case, Henry Harding was objected to by the petitioner, as not being rated to the land-tax. It appeared that the voter's tenant was rated, but that the tenant had lands of his own in the parish, for which he might be presumed to be rated. The committee resolved, *nem. con.* "that the tenant appearing generally rated to the land-tax, is *primâ facie* evidence of his lands being rated, and that the *onus probandi* rests on the objector to the vote, excepting in such cases where the tenant shall be proved to be owner of other lands in the same parish."

Ibid. 36.

In the Gloucestershire case, where an objection was made to a voter as being a copyholder. A receipt was produced for a chief rent by the tenant, who was allowed it in his rent. The committee determined eight to six, "that the evidence produced is sufficient evidence to put the sitting member on proof of the freehold, although no notice was given to the steward or lord of the manor to produce or procure a copy of the court roll."

Ibid. 39.

So, with respect to Nathaniel Long, who was objected to as having no freehold. The petitioner's counsel read a part of a will of the voter's

voter's father, in which he gives his leasehold estates to the voter. It was resolved " that the presumption in this case is sufficient to put the sitting member on proof of the voter's freehold."

And where a voter at the election took the freeholders' oath. The committee resolved eight to six, " that Thomas Brawn's having at the poll taken the freeholder's oath, is sufficient evidence to put the sitting member under a necessity of producing evidence to disqualify him in respect to his freehold, and the value thereof." Gloster, 41.

In the Bedfordshire case, it became necessary 2 Lud. 513. to form some rule for the manner of giving evidence in those cases that arose from a mistake of the voter's name, or of the description of the estate in the assessment, as several objections depended merely on such mistakes. The counsel on one side contended, that when the objection was apparently well founded, it was incumbent on the others to bring evidence to reconcile the difference, if it could be done; and that it could not be necessary for the party objecting to go further than to state the objection in such cases. The counsel for the other party admitted, that in general such was the practice in conducting proofs; but argued, that for the convenience of parties, it would be better to proceed differently here, on account of

the great expence incurred by sending into the country for evidence upon slight objections: That the party objecting in such cases ought, on this account, to shew something of a *real* difference of *persons* as well as of names. At the same time they observed, that for this reason the Cricklade committee, then sitting, had but a few days before established a similar rule of practice. The case which brought this subject into discussion was the following: John Musgrave, who voted for a tenement in the occupation of *John Sharman*, was objected to as not assessed. On the assessment there was the name of John Musgrave (landlord) *himself* (tenant), which appeared to be owing to a change in the occupation between the times of the assessment and the election.—The committee resolved, “ that the party objecting to the vote must prove a *real* difference between the property assessed and that on the poll.”

2 Frazer, 448.

In the Cirencester case, where it was necessary that the inhabitants, householders, should have a legal settlement, the committee resolved, “ that a man’s having given a vote at Cirencester, is a presumptive proof that he had a right to give such a vote; and that nothing less than proof of his having had, at some preceding period, a settlement elsewhere, ought, in the opinion of the committee, to outweigh the presumption arising from his vote.”

By

By the annual resolution of the house before mentioned (*supra* p. 341), in all cases of controverted elections for counties, the parties are within a convenient time to be appointed by the house, to exchange lists of the persons intended to be objected to before the committee, giving the several heads of objection, and distinguishing the same against the names of the voters excepted to *."

Evidence
against county
voters to be
confined to the
list of objec-
tions.

And committees, in order to give efficacy to this rule, will not allow the parties to vary from, or add to the objections mentioned in the lists delivered in. Though where the objection was, that the voter had no freehold of the *value* of 40*s.* the Gloucestershire committee held eight to five that evidence might be given that he had no freehold *at all*.—So, where Thomas Clement was objected to as a pauper, receiving alms, and the evidence produced was, that the overseer had given relief to the voter's wife, the committee resolved seven to six to admit the evidence.

Gloster, 105.

Ibid. 132.

But in the same case it was moved and negatived, nine to four, "that the petitioner having delivered his objections to Thomas Pope, as not having been in possession of the rents and profits of the estate he voted for, above twelve calendar months before the election, the committee be at liberty to consider any evidence to impeach his freehold."

Ibid. 115.

* Vide the form of a list in the Appendix.

Gloster, 121.

The objection to Robert White was, that he had no freehold. In the poll book he had given in his freehold as a rent reserved, and evidence was offered to prove it a rent-charge; which being opposed, as the objection was "no freehold," the committee resolved, seven to six, not to allow the evidence."

Ibid. 132.

Nathaniel Long was objected to as having no freehold. Part of his father's will was read, which gave all his leasehold estates to the voter. To substantiate this vote, another part of the will was read, which devises him a freehold; but the description of the estate given at the election was, "in the occupation of Pierce and others," which was proved to be only leasehold, and the freehold was under 40 s. In support of the vote it was said, that if the description in the will but in any way included the voter, it was sufficient; the original objection being only to "want of freehold," not to "description or value." But the committee, eight to five, held he had no right to vote, under the above circumstances.

Ibid. 148.

In the same case a motion was negatived twelve to one, "that in order to establish the vote of John Cleveland, the description of whose freehold being an annuity or reserved rent, it will be necessary for the sitting member to prove, that the annuity for which he voted was registered, though no objection was taken in the list of objections to the want of it."

In

In the Bedfordshire case, the petitioner objected to a vote as "not duly assessed." The sitting member produced an assessment, which was alleged to apply to the voter, in which the sum charged was 6s. 9d.: but the petitioner endeavoured to shew, from the amount of the tax compared with the value of the land (alleged to be under 40s.), that this assessment did not apply to the freehold described at the poll, which rendered it necessary to inquire into the value of the estate so assessed. This was opposed by the sitting member, as opening an objection to the value of the freehold, which they had no right to proceed upon, not being stated in the heads of objection in the lists. But the committee were of opinion, "that the petitioner might prosecute the inquiry, for the purpose of ascertaining the question arising upon the assessment."

And where the petitioner made several objections to a voter, in the Gloucestershire case, *viz.* "no annuity; not registered; not of value;" the committee resolved, *nem. con.* "that it is not incumbent on the sitting member to produce evidence in order to establish a vote, except as to such objections as have been gone into by the petitioner."

In the same case, a John Ballinger was objected to as having no freehold; but it appeared that there were no less than three persons of the name

2 Lud. 532.

Gloster, 28.

Ibid. 126.

name of John Ballinger. The committee there-upon resolved, *nem. con.* "that as several John Ballingers appear on the poll, the evidence shall be confined to John Ballinger who polled on the first day."

² Lud. 517.

In the Buckinghamshire case, there were two William Wyatts of the same place, who polled for Mr. Aubrey, and the petitioner had objected to one of them as not duly assented. Upon entering into the objection, the sitting member's counsel said, it was necessary for the petitioner to identify the voter objected to; for, as only William Wyatt had been named, it would be enough for them to support the vote of a William Wyatt; and the petitioner should have objected to both of them, in order to succeed in his own way. No resolution passed on the question; but the petitioner's counsel, understanding from the chairman the sense of the committee to be against them, abandoned the objection.

Evidence to be confined to the allegations in the petition.

It is a rule before committees, not to allow a petitioner to go into evidence of matter not alleged in his petition to the house; because the opposite party has no opportunity of preparing himself to answer it.

³ Doug. 3. & vide note *ibid.* p. 15.

As in the case of Petersfield; the petition set forth, "that, at the last election of members to serve in parliament for the borough of Petersfield, Sir Abraham Hume, Baronet, *high sheriff for the county of Hertford*, William Jolliffe, Esq. and

and the petitioner, were candidates." The counsel for the petitioner, in opening their case, said, they intended to object to Sir Abraham Hume as ineligible, being high sheriff for the county of Hertford at the time of the election: but it was insisted by the counsel for the sitting members, that it was not competent to those on the other side to go into the question of the supposed ineligibility of Sir. A. Hume as sheriff of Hertfordshire, because there was no *express* allegation or complaint on that subject in the petition; the words "*high* sheriff for the county of Hertford," appearing in the petition merely as an *addition*, or *descriptio personæ*. And the committee resolved, "that the counsel be not permitted to argue the point of the ineligibility of Sir A. Hume as high sheriff for the county of Hertford, the same ineligibility not being an allegation in the petition."

So, in the Southampton case, after the committee had determined that the sheriff of Hampshire was eligible as member for the town of Southampton, proof was offered that the sheriff of the town, in making out his precept to the returning officer, had omitted the "*nolumus*" part of the writ, and that it was the effect of improper partiality. This was objected to, because there was no charge on that ground contained in the petition, and they were therefore unprepared to answer or make a proper defence

to

4 Doug. 143.

to this new complaint. And the committee, on that ground, refused to let the evidence be gone into.

4 Doug. 55.

But where the words "other undue, corrupt, and illegal practices" were alleged in the petition, the committee, in the second Cricklade case, "were of opinion, that the counsel for the petitioners were at liberty to enter into the proof of bribery by Samuel Peach, Esq. it being comprehended in [the words] *corrupt practices*, alleged in the petition."

Philipps, 232.

In order to prove the agency of a Mr. Huchins, brother-in-law to one of the sitting members, a witness was called; and being asked, whether Mr. H. ordered the treats which were given to the voters, the counsel on the other side objected to it, as there was no allegation in the petition, that the sitting members, by themselves or agents, were guilty of treating. But the committee allowed the counsel to prove the agency by the means of treating.

3 Lud. 415.

In the case of Colchester, the petition of Sir Robert Smyth stated, that a commission of bankrupt had issued against Mr. Potter, one of the members returned, and an assignment of his effects made for the benefit of his creditors; "and, for these reasons," the petitioner insisted that Mr. Potter had not such an estate in law or equity as qualified him to be elected and returned. It was said in behalf of Mr. Potter,
that

that the petition did not directly aver the incapacity, but was argumentative, and supposed it by inference from the facts alleged. But the committee resolved, " that the petition contained an express charge of want of qualification."

In the second Norwich case, Mr. Hobart had ³ Lud. 455. been returned, as having the majority of votes over Sir Thomas Beevor. Certain electors of Norwich petitioned the house against the return of Mr. Hobart, stating that, at the election preceding, he had been returned for Norwich, but that petitions from the electors, and Sir Thomas Beevor (who was then a candidate), were presented, charging Mr. Hobart (*inter alia*) with bribery and treating; and stating, that the committee who were appointed to try and determine the merits of the election and return, had determined, on the evidence laid before them (and which was confined to the bribery and treating only), that neither Mr. Hobart, nor Sir Thomas Beevor was duly elected, and that it was a void election; and therefore alleging, in the last petition, " that the election of the said Henry Hobart having been declared void on the ground of his having violated the acts of parliament against bribery and entertaining the electors, he was thereby, and by the true construction of such acts of parliament, and according to the law and custom of parliament, rendered incapable to represent

EVIDENCE.

present the city of Norwich in parliament, at any election to fill the said vacancy; and, therefore, that he was not eligible, and ought not to have been returned at the said late election: but that the said Sir Thomas Beavor was duly elected, and ought to have been returned, as being the only person who offered himself, in the room of the said Henry Hobart; and that this appears by the writ before stated, which expressly commands that some other person shall be elected in the room of the said Henry Hobart, and by which the said Henry Hobart himself is therefore excluded."

The counsel for the petitioners, in opening their case, stated the circumstances of the former election, and the general effect of the evidence then laid before the court, and claimed the seat for Sir Thomas Beavor. After they had finished their opening, the counsel for the sitting member objected to the further proceeding on behalf of the petitioners, saying there was no charge in the petition expressly and directly affecting the sitting member with an offence that subjects him to the incapacities contended for; that it alleged no fact *expressly* leading to any such conclusion, neither bribery nor any other charge; and therefore nothing appeared to require a defence from the sitting member; for every trial ought to proceed *secundum allegata et probata*. The committee (though they afterwards determined

Mr.

Mr. Hobart to be duly elected, on an opinion that, from the proceedings of the former committee, it did not appear that they adjudged the seat void on the effect of any other evidence than that of treating, which the present committee did not conceive a disqualification, by the statute of William the Third, as prospective to a future election) resolved, "that the counsel for the petitioners should proceed with the evidence:" and they afterwards informed the counsel, "that the above opinion was confined to the objection made on the part of the sitting member, that no charge was stated in the petition."

But there is an exception to the last-mentioned rule, where it happens that there are returns by two persons claiming to be returning officers; for as the committee, in that case, generally determine the question as to the return first, the person named in the return which they establish, is afterwards considered as the sitting member, and therefore allowed to go into evidence not stated in *his* petition.

As in the case of Downton in 1785, where ³ Lud. 173. there had been a double return on a vacancy: one of Mr. Bouverie, who was returned by one Dagge; and the other of Mr. Conway, by one Serle. Both returns were annexed to the writ. That of Mr. Bouverie being first, his counsel were going to begin according to the standing order of the 18th March 1728, (*supra* p. 384); but

Ibid. 195.

but they were stopped by the other side, who relinquished the claim of Serle to be returning officer. The proceedings of the cause, therefore, were confined to the poll taken by Dagge, in the same manner as if there had been no other; Mr. Conway's counsel began, as for a petitioner.—In the course of the proceedings in the cause, Mr. Bouverie's counsel proposed to enter upon objections to twelve votes received for Mr. Conway. This was objected to; and it was contended, that there was no allegation in any of the petitions in favour of Mr. Bouverie to warrant it, and that the committee could not receive evidence of any other facts than those therein stated. The counsel for Mr. Bouverie argued, that the question on the return had been determined; and though not by a resolution of the court, yet in a manner at least conclusive against Mr. Conway: for it was by the submission of his counsel. This therefore gave to Mr. Bouverie a right to the *return*; and if the practice of the present election court had been such as it was in former times, on double returns, a report, in consequence of it, would have been made to the house, that he ought to have been returned. That, as soon as Mr. Conway made the above acknowledgment, Mr. Bouverie became in effect the sitting member, subject to the inquiry into the merits of the election. That the cause begins upon the several

petitions; but it is a mistake to say, that the cause continues in this state after the determination of the first question. In appearance, and in substance, it changes, and becomes a trial of the petition of that party who fails on the return. The committee resolved, "that Mr. Plumer (counsel for Mr. Bouverie) be admitted to attack Mr. Dagge's poll, with respect to the votes opened to the committee by Mr. Wilson (also counsel for the same gentleman)."

So, in the case of Oakhampton, where there ^{1 Frazer, 69.} had also been a double return. One by the mayor, of Messrs. St. Ledger and Ladbroke; and the other by the portreeve, of Messrs. Anderson and Townson. The question as to the proper returning officer for this borough being first discussed, the committee determined, that the mayor was the proper returning officer, whereby Messrs. St. Ledger and Ladbroke were placed as sitting members in the cause. After that ^{Ibid. 151.} decision, Mr. Graham, as counsel for Messrs. St. Ledger and Ladbroke, opened the evidence he meant to adduce, to prove that some voters had been improperly admitted by the mayor to vote in favour of Messrs. Anderson and Townson. When, however, he called witnesses to substantiate his objections to those voters, the counsel for the latter gentlemen said, that if the object of that evidence was to impeach the mayor's poll, in respect of certain

E c

votes

1 Doug. 120.

votes admitted for his clients, he must observe, that the petition of Messrs. St. Ledger and Ladbroke contained no allegation of misconduct in the mayor, or that he received votes against them, which ought not to have been received. In answering this objection, the counsel mentioned, that, in the case of Milborne Port, the counsel for Lutterel and Wolfey proposed, without opposition, to strike off five voters from the poll of Oliver their returning officer, though their petition contained no allegation of misconduct in him: and they also cited the above-mentioned case of Downton. The committee resolved, "that the counsel for Messrs. St. Ledger and Ladbroke be permitted to adduce evidence, to impeach the votes on the mayor's poll for Messrs. Anderson and Townson."

Evidence for
the sitting
member must
be confined to
the opening.

3 Lud. 112.

The evidence for the sitting member must be confined to the opening of the case: As in the case of Seaford, in 1786, the counsel for the sitting member proposed to disqualify a voter, for having offered to bribe another. This was objected to, as the counsel for the sitting member had not stated any such fact as an objection to a vote in the opening their case. In answer, it was said, they stated that votes would be *affected by bribery*. The committee resolved not to permit the counsel to call the evidence.

2 Frazer, 451.

So, in the Cirencester case, the counsel for the sitting member was proceeding to offer evidence,

dence, on the 35th day, with respect to a voter, when the counsel for the petitioner objected, that there was no such person on the poll. The committee after argument resolved, "that, at this period, no notice having been given in the opening of the case, they cannot permit the counsel for the sitting member to produce evidence to prove that the name of a voter, as recorded in the poll, is erroneous."

In the Bedfordshire case, John Trotman was objected to; and, in support of the objection, the tenant of the estate was called to prove, that he considered one Wells to be his landlord, to whom he paid his rent, and who let him the estate: that it had belonged to William Hawkins, then dead. In support of the vote, Hawkins's will was produced, whereby the estate was devised to the voter; and it was argued, that from hence it ought to be presumed, that Wells was only a tenant to Trotman; and that, in order to substantiate the objection, evidence ought to have been given of a sale by him to Wells, if Wells really were the owner.

Proving the receipt of rent by a stranger, not sufficient to disqualify the owner.

2 Lud. 431.

In the Downton case, the petitioners' counsel stated, that they should add to their numbers fifty, who had tendered their votes, and were rejected by the returning officer: they said that it would be unnecessary to bring any other proof of the voter's having tendered his vote to the returning officer, than the *poll* itself, given

Evidence of tendering a vote.

1 Lud. 146.

in to the committee, in which the word "*rejected*" is written opposite to the name of the voter. To this no objection was made by the counsel for the sitting members.

2 Lud. 569.

In the Bedfordshire case, the voter himself was allowed to be examined, to prove his having made a proper tender.

To be given before evidence to establish a vote.
Gloster, 30.

It was moved and carried, 13 to 1, in the Gloucestershire case, "that it is necessary for a person claiming a right to vote, to prove having tendered his vote for a particular candidate, before evidence be allowed to establish such vote."

To whom the tender must be made.
Ibid. 32, 33, 34.

And it was afterwards held, 8 to 7, "that a voter declaring in the booth his intention to vote for a particular candidate, *but not to the poll clerk*," was not a good tender.

Proof of due application to be admitted a freeman, to be given before evidence of his right.

1 Frazer, 167.

Evidence to prove misconduct in making rates, to be given before proof of rateability.

Peterborough,
3 Doug. 63.
Mitchel,
1 Lud. 81.

The committee in the Oakhampton case determined, that evidence should be given of due application having been made by James Bezel to be admitted a freeman, before evidence of his right to freedom by apprenticeship.

From the cases of Peterborough and Mitchel it appears, that where there has been sufficient time for those persons who are left out of a rate to appeal to the sessions, proof of misconduct or criminal partiality must be adduced, before the committee will allow evidence to be gone into, as to the rateability of those who are omitted, to entitle them to vote.

It seems from the case of Mitchel, before noticed under title *Bribery*, that the committee held it necessary, to prove the agency of Curgenven, previous to being let in to prove an act of bribery by him, so as to affect Mr. Hawkins, one of the petitioners. And the committees in the cases of Hindon, Worcester, Shaftesbury, and Norwich were of the same opinion.

Evidence to prove agency, previous to proving an act of bribery by an agent.

2 Lud. 89.

Hindon,
1 Doug. 175.
Worcester,
3 Doug. 262.
Shaftesbury,
3 Doug. 309.
Norwich,
3 Lud. 451.

But the committee in the Bristol case were of a direct contrary opinion; for there a witness was called to prove the payment of money, by a supposed agent of one of the parties, which being objected to, till proof of the agency was first brought, the committee over-ruled the objection.

1 Doug. 279.

And so in the Ivelchester case, a witness was going to relate a conversation which passed between him and another person, alleged to be an agent for the sitting member: this was objected to, till proof of such person's being an agent was first produced, and the cases of Hindon and Shaftesbury were cited in favour of the objection; against it, the Bristol case was mentioned. The chairman said, he had inquired into what had been done by the committee in the case of Shaftesbury, and had been informed by the gentlemen who had sat in that committee, as well as by some of the counsel in the cause, that although on the first day of the trial

3 Doug. 159.

Hindon,
1 Doug. 175.
Shaftesbury,
3 Doug. 309.

x Lud. 470.

a resolution had been come to agreeable to what is stated in the printed report of the case, yet they had afterwards found such inconvenience attending the rule, that it was agreed on all hands not to abide by it; and that it was not adhered to after the first day: upon which the counsel desisted from the objection.—And in a subsequent case relating to this borough, the committee laid down a rule conformable to the above, *i. e.* upon questions concerning the acts of a supposed agent, not to insist upon proof of his being an agent, *previous* to the inquiry into his acts.

When fresh
evidence may
be produced.

Gloster, 8.

In what cases fresh evidence may be produced, relating to particular voters, during the trial of the cause before the committee, will be seen from the following cases:—It was moved in the Gloucestershire case, but negatived, 8 to 7, “that the counsel be acquainted that it is the opinion of the committee, that having gone through the evidence relating to any particular vote, no fresh evidence shall be produced on that vote in the course of the cause, without leave from the committee.”

Ibid. 21.

In the same cause, it was resolved, 9 to 5, “that having gone through the evidence relating to the objected votes in any particular booth, no fresh evidence shall be adduced on such votes in that booth.”

Ibid. 32.

And it was also resolved, *nem. con.*, “that the counsel be restrained from examining fresh witnesses,

witnesses, touching a voter, after having proceeded to examine witnesses relative to a subsequent one, unless such witnesses shall have been named to the committee at the time such vote was first under consideration, and special cause then shewn, that it was not in the power of the parties at that time to produce such witnesses."

To substantiate the vote of Thomas Dark, in the Gloucestershire case, a parchment, said to be a fine, was produced in evidence, but objected to, as it did not appear to have been examined with the records in the common pleas. The committee consented to hear it read, on condition that, if not usually admitted without examination, the agent should examine it, and report the fact.

Allowing evidence de bene esse.

Gloster, 119.

In the Downton case, the committee were desired to ask leave of the house to adjourn, or to adjourn at once to the lodgings of one of the witnesses for the sitting members (who then lay dangerously ill, and whose evidence they said was very material), if the counsel on the other side would consent to that method. The latter, upon being asked, refused their consent: and on the 13th section of the 10 Geo. 3. c. 16. being read (*supra*, p. 383.), the committee intimated an opinion, that such adjournment would be illegal, by the positive directions of the statute. It was then proposed, that the committee might delegate the clerk to take the witness's deposition

1 Lud. 280.

in the presence of persons authorized by both parties: to this one of the committee observed, that they could not commit a power to their clerk to take a deposition; and here the matter dropped.

What use may
be made of
written evi-
dence after it is
delivered in to
the committee.

2 Fraser, 340.

Where written evidence of any sort is delivered in to the committee by one party, for a particular purpose, as for instance, to prove that persons of a certain description only voted at elections, the counsel for the opposite party, *after* such evidence is delivered in, are not at liberty to make any other use of it than merely reading it to the committee. Thus, towards the conclusion of the Steyning case, a witness was called to prove, that to his knowledge all the persons who had signed certain returns, which were *then* produced and shewn to him, lived in old borough-houses. The counsel for the appellants were about to minute down certain names; which were found in other returns previously produced in evidence to the committee, but it was objected to by the counsel who produced the returns; and insisted that the counsel for the appellants should confine themselves to such returns as might then be produced, of which it was allowed they might make what use they pleased, by way of cross-examination. The committee allowed the objection, but admitted the counsel for the appellants to *read* the names of persons from the returns and other evidence delivered in by them.

In the case of the county of Cambridge, *affidavits* taken before the masters of the chancery were offered in evidence, but the committee and the house agreed in refusing them; "for that affidavits were, for the most part, cautiously penned by the parties sworn, or by their counsel, expressing only part of the truth, to the advantage of that side which they favoured; and the parties making affidavits were not seen to have their persons and qualities considered of, nor cross-examined, for the discovery of the whole truth: or if affidavits should be allowed, yet to allow affidavits, taken before the masters of the chancery, for things not pertaining to that court, to be used as good proofs in parliament, were derogatory to the honour and power of the house."

Affidavits not
allowed.

Glanv. 84.

The committee in the Ivelchester case made it a rule, where one witness directly contradicted what another had sworn, to call in such other witness, and confront them together: and that rule has been adopted by other committees.

Confronting
witnesses.

3 Doug. 169.

In the same case, it was proposed by the sitting member's counsel, to call three persons to corroborate what a witness then swore as to his being bribed; by proving that such witness had mentioned to those three persons the circumstances of the bribery. This was objected to by the other side; as it was said to be an established rule, that when a witness is examined in

Corroborating
evidence.

3 Doug. 162.

In *chief*, to any fact, evidence is not to be called to corroborate his testimony, unless the opposite party first bring evidence to impeach it; and the case of Halliday and Sweeting (Michaelmas 16 Geo. 3.) was cited in support of the rule. In answer, it was contended, that the rule was not general; for that in cases of rapes, after the woman has given her evidence of the rape, it is the constant practice to admit her friends and relations, to prove her having told them of it about the time when it happened. The objection being insisted on, the point was given up on the part of the sitting members.

Witness called
to rectify his
evidence.

Gloster, 181.

In the Gloucestershire case, a witness had said, that an agreement had been entered into by himself (the heir at law) and his brothers, for the division of his father's estates according to his will; but that he did not know, as heir at law, he could claim the whole. The question proposed to be put to him, on his being called a second time, was, "Did you think yourself bound by the agreement, or was you deceived?" which being objected to, it was said in support of the question, that in the court of chancery, on a man's application to rectify his own evidence, it was often granted, or, if examined on interrogatories. Against the question; that it was done in chancery, but not after publication. The committee, 7 to 6, allowed the objection.

In the case of Worcester, the returning officer being called to produce the poll on the first day the committee sat, the counsel on the other side proposed to cross-examine him as to the appointment of the constables, and other points of the case: this was objected to, as contrary to the practice of committees, and as anticipating the defence, before the examination of witnesses to establish the charge. It was answered, that it was the established practice in other courts of justice, for one party to cross-examine witnesses called by the other merely for the production of deeds or writings. The committee determined, that the counsel should not cross-examine the witness to the appointment of the constables, *at that time*.

When a witness
may not be
cross-examined.

3 Doug. 261.

A cancelled charter, found among the records of the corporation of Lyme, was allowed to be received as evidence of the *reputation and usage* in the borough, as to electing members.

Evidence of
usage.

2 Lud. 28. n.

In the Saltash case, in 1787, a paper was offered in evidence to prove the reputation of the right of election in 1722. This paper contained instructions for a poll previous to an election in that year, and was in the hand-writing of a Mr. Hickes, (at that time town clerk of Saltash, and long since dead,) containing his opinion upon the point. It was objected to as not being evidence. In answer, it was said, amongst other things, that if any person had
heard

Ibid. 208.

heard him declare his opinion to the effect mentioned in the paper, it might be given in evidence by such person now; much more ought it to be received, when reduced into *writing*. The committee held it to be admissible.

Last determina-
tions.

It has been seen in a former part of this work (p. 384.), that by the standing order of the house in 1735, the counsel are restrained from offering any evidence touching the legality of votes, contrary to a last determination of the house*, which is made final by the fourth section of the 2 Geo. 2. c. 14. viz. "that such votes shall be deemed legal, which have been so declared by the last determination in the house of commons; which last determination, concerning any county, city, shire, borough, cinque-port, or place, shall be final, to all intents and purposes whatsoever, any usage to the contrary notwithstanding."

2 G. 2. c. 14.

* In the three cases of Pontefract, the dispute was, whether a resolution of 1624, or one of 1770, ought to be considered as a last determination within the 2 Geo. 2. ? The committee in the first case, by determining that the two sitting members were duly elected, held the resolution of 1770 to be the last determination. 1 Doug. 408.—In the second, the committee resolved, "that the resolution of 1624 is a last determination, under the act of 2 Geo. 2. c. 24. s. 4." 1 Lud. 10.—In the third, statements in writing were delivered in; that for the sitting members to the effect of the resolution of 1624, and that for the petitioners to the effect of the resolution in 1770. The committee determined, that the right of election, as set forth in the statement delivered in for the sitting members, was the right of election for Pontefract. 1 Frazer, 261. By the resolution in 1624, the right was in the inhabitants, householders, residents; but by that in 1770 it was confined to burgage-tenants only.

Yet where the words of a last determination are ambiguous or equivocal, evidence may be brought to *explain* them. This appears from the cases of New Radnor and Dorchester. The words of the resolution in the latter are, "that the right of electing burgessees to serve in parliament for the borough of Dorchester in the county of Dorset, is in the *inhabitants* of the said borough paying to church and poor in respect of their personal estates, and in *such persons* as pay to church and poor in respect of their real estates within the said borough." The counsel for the petitioners contended, that the last clause of the determination means only, "such as are *occupiers* of real estates within the borough, and, in respect thereof, pay to church and poor." On the other side it was maintained, that it means "*owners* of real estates within the borough, paying in respect thereof to church and poor, whether such real estates are in their own *occupation*, or not." The committee permitted a witness, who remembered the election in 1720, to be called to prove, that no persons who were merely *owners*, and were neither *occupiers* of real estates, nor inhabitants, voted at that election. But it appeared that, of a list of persons whom he remembered to have polled at that time, there were ten out-voters, or persons merely owners. The usage since 1720, was admitted to be in
favour

New Radnor,
1 Doug. 318.
Dorchester,
ibid. 349.

favour of out-voters. After argument, the committee resolved, "that it is the opinion of this committee, that, pursuant to the last determination of the house of commons, such persons as pay to church and poor in respect of their real estates within the borough of Dorchester in the county of Dorset, though not inhabitants or occupiers, were entitled to vote at the last election," &c.

3 Doug. 21.
3 Lud. 33.

But evidence is not allowed to *contradict* a last determination. As, in the cases of Seaford, the last determination appeared to be entered in the Journals in these words: "10th February 1670-1; Sir Job Charlton reports, from the committee of elections, the state of the case and evidence touching the election for the town of Seaford in the county of Suffex, and the question thereupon arising, whether the right of election were in the bailiff, jurors, and freemen only, or in the populacy? and that the committee were of opinion, that the bailiff, jurors, and freemen had not only voices in the election, but that the election was in the populacy. On the question being put to agree with the committee, it was resolved in the affirmative, 108 to 102." After this entry was read, the counsel for the sitting members desired that an explanatory resolution, made by the house in 1761, should also be read, which is as follows: "Resolved, that in the last determination

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determination of this house, of the right of election of barons to serve in parliament for the town and port of Seaford in the county of Suffex, made the 10th day of February in the year 1670, which is as followeth, viz. "that the bailiff, jurors, and freemen had not only voices in the election, but that the election was in the popu- lacy;" the word "populacy" therein mentioned, extended only to "the inhabitants, housekeepers of the said town and port paying scot and lot." It was objected by the counsel for the peti- tioners, that the explanatory resolution of 1761 was inconsistent with the true sense of the deter- mination in 1670, which was the last deter- mination of the house when the 2 Geo. 2. c. 24. took place, and therefore final, and not to be altered by any resolution subsequent to the statute. And both the committees resolved, "that the counsel should not be permitted to call evidence to *contradict* the resolution of 1761."

Nor will evidence be allowed to superadd a qualification to those described in the last deter- mination. In the Horsham case, where the 2 Fraser, 5: right of election, by the last determination, is 18 Journ. 175. "in all such persons as have an estate of inhe- ritance, or for life, in burgage-houses, or bur- gage-lands, lying within the said borough;" it was insisted by the counsel for the sitting mem- bers, that, in addition to the qualifications de- scribed in the resolution, the voters must also
be

EVIDENCE.

be presented by the homage jury, and admitted to their property by the steward of the borough at the annual court baron. But the committee required the counsel to state, whether they could raise such a doubt respecting the determination of the house upon the right of election, being a last determination within the meaning of the act of parliament, as would enable the committee to call upon the parties to deliver in statements of the rights of election for which they respectively contended. After the point had been argued on both sides, the committee resolved, "that the counsel for the sitting members be not permitted to shew by evidence, that it is necessary that persons, having an estate of inheritance, or for life, in burgage-houses or burgage-lands lying within the borough of Horsham, should be presented to or admitted at the lord's court, in order to be qualified to give their votes at the last election," &c.

2 Doug. 225,

Where the entry in the Journals is not *positive* and *direct*, evidence will be allowed as to the right. Thus, in the case of Poole, it was disputed whether there was any last determination. The counsel for the sitting members insisted, that such determination was to be found in the Journals of 9th Feb. 1688-9, and is as follows: "A petition of Thomas Chaffin, Esq. complaining that Sir Nathaniel Napper had been returned, in prejudice to the petitioner, having

having been referred to the committee of privileges and elections, their chairman reported to the house, "that the matter in question was, whether the right of election be in the mayor and burgesses only, or in the mayor, burgesses, and commonalty who pay scot and lot: that Sir N. Napper had 33 burgesses, and Mr. Chaffin but 22, but of the *commonalty* the latter was allowed to have had the greater number; and thereupon the committee had agreed on two resolves; 1. that it is the opinion of the committee, that the right of election of burgesses to serve in this present parliament for the town and county of Poole, is in the mayor, burgesses, and commonalty of the said town and county who pay scot and lot; 2. that it is the opinion of this committee, that Thomas Chaffin, Esq. is duly elected a burgess to serve in this present convention for the town and county of Poole." A debate arising in the house on these two resolutions, they were both moved, and passed in the negative; after which the house resolved, "that Sir N. Napper is duly elected a burgess to serve in this present convention for the town and county of Poole." The counsel for the petitioners contended, that this disagreement by the house could never be considered as a determination within the meaning of the statute of *Geo. 2.* and that if the house had meant to declare the right of election in Poole upon that occasion,

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they

they would have done it, as in similar cases, by a *direct* resolution. It was argued by the other side, that Sir N. Napper could not have been adjudged to be duly elected, but upon the foundation of the right being in the mayor and burgessees, exclusive of the other claimants; and that it is not necessary that the determination, in order to bring it within the meaning of the statute, should be in the technical words of a *resolution*: if that had been the intention of the legislature, the word "*resolution*" would have been used in the statute. The committee resolved, that they should proceed to give evidence of the right of election.

II. Of *viva voce* evidence.

10 G. 3. c. 16.
Select committee empowered to send for persons, &c.

Persons disobeying summons, or prevaricating,

to be reported by the chairman.

10 Geo. 3. c. 16. s. 18. "The said select committee shall have power to send for persons, papers, and records, and shall examine all the witnesses who come before them * upon oath." And, by the 26th section, "if any person summoned by the said select committee, shall disobey such summons; or if any witness before such select committee shall prevaricate, or shall otherwise misbehave, in giving, or refusing to give evidence; the chairman of the said select committee, by their direction, may, at any time during the course of their proceedings, report the same to the house, for the interposition of

* Vide this oath, *supra*, p. 389.

their

their authority or censure, as the case shall require."

And, by the 28 Geo. 3. c. 52. s. 16. "If any person summoned to attend the said select committee, by the warrant of the speaker of the said house *, or by order of the said select committee, shall disobey such summons, or shall give false evidence, or prevaricate, or otherwise misbehave, in giving, or in refusing to give evidence before the said select committee, the committee shall have power, by a warrant, to be signed by the chairman, and directed to the serjeant at arms attending the house of commons, or to his deputy or deputies, to commit such person (not being a peer of the realm, or a lord of parliament) to the custody of the said serjeant, without bail or mainprize, for any time not exceeding twenty-four hours, if the house shall then be sitting, or if not, then for a time not exceeding twenty-four hours after the hour to which the house shall then be adjourned."

28 G. 3. c. 52.
Witnesses not attending, or giving false evidence, &c. to be committed.

All witnesses of whatever religion or country, that have the use of their reason, are received and examined; except such as are, 1. *infamous*, or such as are, 2. *interested* in the event of the

Who may be witnesses.

3 Bl. Com. 369.

* Before the committee are chosen, the speaker (on application to his secretary) issues the necessary warrants for the appearance of witnesses, and the production of papers and records; afterwards, the chairman of the committee signs orders for those purposes. The form of the speaker's warrant, and chairman's order, may be seen in the appendix.

cause : all others are competent witnesses, though their credibility must be judged from other circumstances. But no person who has been in the committee-room during the examination of another witness, is admitted to be examined, except he is an agent for one of the parties*.

Persons excluded from being witnesses.

2 Bull. N. P. 91.
As infamous.

Ibid. 292.

1. "*Infamous persons*" are those who have been convicted by law of crimes which render them so; such as treason, felony, and every *crimen falsi*, as perjury, forgery, and the like. For where a man is convicted of those glaring crimes against the common principles of humanity and honesty, his oath is of no weight. Or those who profess no religion that can bind their consciences to speak truth, such as infidels; but when any person professes a religion that will be a tie upon him, he is admitted as a witness, and sworn according to the ceremonies of his own religion; for it would be ridiculous to swear a witness upon the Holy Evangelists, who did not believe those writings to be sacred. The Jews are always sworn upon the Old Testament; Mahometans on the Koran; those of the Gentoo religion, according to the ceremonies of that religion. Those who are excommunicated cannot be witnesses, for, being excluded out of the church, they are supposed not to be under the influence of any religion.

* Vide supra, p. 390.

A person

A person is not allowed to prove himself infamous: as, in the Gloucestershire case, it was proposed to call a freeholder, who at the poll had taken the freeholders' oath, to prove that he had no right to vote; on which it was moved, and negatived, 7 to 6, "that the voter, if willing, be called in as evidence."

Gloster, 80.

So, in the case of Seaford, the committee were of opinion (though they did not express it by a formal resolution) that a voter, who at the poll took the bribery oath, could not be called to prove himself bribed; and it was so held in the case of Shaftesbury*.

3 Lud. 112.

Some persons are excluded from testimony, for want of skill and discernment; such as *idiots*, *madmen*, and *children*. And in regard to children, there seems to be no precise time wherein they are excluded from giving evidence; but it depends in a great measure on the sense and understanding of the child, as it appears on examination to the court.

Ibid. 111.

As wanting discretion.

Bull. N. P. 293.

It is a general rule of evidence, that "*persons interested in the question cannot be witnesses*," and they may be examined upon *voire dire*, if sus-

As being interested.

Ibid. 283.

* A contrary doctrine was held in the case of Bush v. Ralling, Sayer's Rep. 289. ; and also in the Sockbridge case, in 1793. In the latter, the editor was present when the committee admitted two voters who had taken the bribery oath at the poll, to prove themselves bribed; though, previous to their being examined, the chairman informed them they were not compelled to answer any question that tended to criminate themselves.

pected to be secretly concerned in the event; or their interest may be proved in court. Which last is the only method of supporting an objection to those who are excluded from testimony as being infamous; for no man is to be examined to prove his own infamy.

1 Doug. 150.

It was held by the committee, in the case of Morpeth, that a returning officer is not so far interested in the event of the cause before the committee, as to be incompetent to prove that he had been compelled by force to make a false return.

1 Lud. 275.

In the Downton case, the earl of Radnor, on being called as a witness, was asked, "whether, in the event of a new election arising out of the present petitions (as if, by reducing the numbers to an equality, the committee should determine the last election to be void), he should pay the expences of such new election?" and he answering in the affirmative, the committee were of opinion that he was not a competent witness.

Gloster, 98.

But it is no good objection to a witness, that he is interested in proving a title in himself, when he can neither get or lose by the event of the cause. Thus, in the Gloucestershire case, as to the vote of Richard Roberts: he married the supposed widow of one Daniel, who had been missing some years. The eldest son of Daniel claimed, and offered to sell the house: he was brought as a witness to prove his own right,
and

and the committee allowed him to be examined.

In the same case, one Easton was objected to, as not in possession of the rents and profits. He had entered into articles to sell his estate to one Rawlins, but the articles were not carried into execution. Rawlins was called as a witness, but objected to, as it would be admitting him to prove his own title. It was answered, he could not be a witness to prove his own title, but only as to the possession of the premises in respect to the voter. And the committee, 10 to 4, allowed him a competent witness. Gloster, 18.

The committee, in the Downton case, held, that a *grantor* in a deed was so far interested as not to be competent to prove it. 1 Lud. 267.

Several instances have occurred before select committees, where some of the voters, who were *petitioners* to the house, have been called as witnesses, but objected to as being parties in the cause, and consequently interested in the event of the question. But, in the second Cricklade case, there were two petitions from two different sets of the voters in the borough. The one of them, after stating other charges, concluded thus: "that by these, and other undue, corrupt, and illegal practices," the sitting member procured himself to be returned, &c. The other only contained these words, "other undue practices." And on evidence being offered to prove bribery Petitioners.
3 Doug. 165.
4 Doug. 53.

4 Doug. 57.

bribery by the sitting member, it was objected to, as the petitions contained no allegations on that head: but the committee determined, that the charge of bribery was comprehended in the words "corrupt practices." On which a person being called to prove bribery by the sitting member, who had signed the latter petition, he was objected to; but the committee over-ruled the objection, as he had not signed the petition which, according to the resolution of the committee, contained the charge of bribery.

Electors.

2 Doug. 236.

Where the question is, whether a certain description of persons have a right to vote? and a voter, on the *voire dire*, acknowledges himself to be of that description, he is so far interested as to be inadmissible to give evidence. Thus in the case of Poole: the question there was, whether the right of election was "in the burgessees of the borough exclusively;" or, "in the *inhabitants* and householders within the borough, paying scot and bearing lot?" To prove this to be a borough by prescription, and therefore the right to be in the inhabitants*, a charter (supposed to be granted about 1190) was given in evidence, whereby the lord of the manor of Great Canford grants and confirms to his *burgesses* of Poole, and their heirs (*inter alia*), that his said burgessees should have well and peaceably their yearly *liberty of herbage* in his

* Supra, p. 69.

heath, as they had always been accustomed to enjoy; and necessities *for their firing* in his heath or common, by the view of his bailiffs: under which, confirmed by all the subsequent charters, the *inhabitants* of Poole enjoyed a right of common. To prove this right of common, a witness was called who was possessed of an estate for 99 years in the manor of Canford, and was an *inhabitant* of Poole; he was objected to as being interested, and the committee resolved not to admit his evidence. Afterwards, an inhabitant ^{2 Doug. 273.} who had been on the parish books three years, and therefore disqualified from voting, was allowed to prove the right in the inhabitants or commonalty.

So, in the second case of Cricklade, a person ^{4 Doug. 75.} was called to prove that non-resident freeholders had a right to vote: but it appearing that the witness was a non-resident freeholder, his evidence was objected to, as being incompetent to prove his own title; and the committee allowed the objection.

And where one of the nine presiding commonalty stewards of Milborne Port was asked a question touching the right of the nine commonalty stewards to vote, it was objected to, and the question waived, he having a contingent interest to maintain their right of voting. ^{1 Doug. 134.}

But a voter may be examined, where his evidence only tends to *narrow* the right of election;

¹ Doug. 359.

tion; as in the case of Dorchester, where the right of voting is in the inhabitants paying to church and poor in respect of their personal estates, and in such persons as pay to church and poor in respect of their real estates. For, on a person's being called to prove that no out-voters polled in 1720, who acknowledged himself to be an inhabitant having a right to vote in respect of his personal estate; he was objected to, as being interested to diminish the number of electors, and thereby enhance the value of the votes which remained; but the committee overruled the objection.

Cricklade,
⁴ Doug. 68.
 Carlisle,
³ Lud. 571.
² Frazer, 340.

The same doctrine was held in the second cases of Cricklade and Carlisle.

So, in the Steyning case, a person was allowed to be examined to prove that the right of voting there was in the inhabitants of the borough-houses, in exclusion of the rest of the inhabitants; though he acknowledged himself to be the proprietor of an old borough-house.

¹ Frazer, 169.

And, in the case of Oakhampton, one Pudner claimed to be enrolled a freeman, as the *eldest son* of a freeman born within the borough. But it was contended, that the bye-law of the corporation, allowing *eldest sons* of freemen to the freedom of the place, meant only the first born, and Pudner had an elder brother who died young. The testimony of the corporators (which the committee received from the necessity of the case)

case) was in favour of the restrained sense; but the entries in the books of persons admitted, state them to be eldest sons, till that of Ford (subsequent to the election) who is called the eldest born son of his father. The committee allowed the vote to be good.

Committees have varied as to allowing a voter to be examined, to correct the poll-book as to his own vote. Thus, in the first Bedfordshire case, one Bennett had voted for lord Ossory ^{1 Lud. 382.} and Mr. St. John, but in the poll-book his vote was entered for lord Ossory only, and both the check-books agreed with the poll. To correct this mistake the voter himself was called, but the committee refused his evidence.

Yet the Bedfordshire committee, in 1785, admitted such evidence; as appears by the following cases:

The vote of Thomas Ayres was entered in the poll-book for lord Ossory *only*. Evidence was offered to prove that he declared his vote for both lord Ossory and Mr. St. John; and the committee resolved, "that it was competent to them to hear evidence to correct an entry in poll." The committee agreed to receive the evidence of a by-stander, who said he heard Ayres poll for both candidates; and they also determined to admit Ayres to prove for whom he did vote, when he said he polled for lord Ossory and Mr. St. John. The check-books

books of both candidates agreed with the entry in the poll-books. And the committee resolved, "that Thomas Ayres should be put upon the poll for Mr. St. John."

2 Lud. 407.

William Day's vote was entered on the poll for lord Ossory and Mr. St. John: it was alleged that the vote was given for lord Ossory, instead of Mr. St. John. The voter himself related the fact, and was confirmed by persons who were present, and by other circumstantial evidence, together with the check-books of both parties, which were in the names of lord Ossory and lord Ongley. Whereupon the committee directed his vote to be struck off Mr. St. John's poll, and added to lord Ongley's.

Ibid. 408.
410.

The votes of R. Taylor and James Smith were each objected to, as voting for freeholds of less than 40 s. a-year. They had other premises sufficient together to make up 40 s. but in the occupation of other persons than those named in the poll. Each swore he had given in the names of both his tenants to the poll-clerk, though he had in the oath repeated the description in the poll, which was confirmed by the check-books on both sides. The evidence of Taylor was given credit to by the committee, who allowed his vote; but Smith's was disallowed.

The evidence of both the last voters were objected to, but over-ruled by the committee; though

though they "recommended it to the counsel" ² Lud. 411.
to avoid, in such cases, the producing witnesses,
unsupported by other testimony, or any con-
curring circumstances; as their evidence would
not be likely to have weight in the decision."

A voter is competent to disprove his being
bribed. Thus, in the case of Ivelchester, one ³ Doug. 165.
Gillet was proved to have received ten guineas
to vote for the sitting member; and it was
admitted on the part of the sitting member
that, by this act, his vote was destroyed: being
called to give evidence that he did not know
the money to be either of the sitting member's,
he was objected to. The committee, however,
over-ruled the objection, though in fact Gillet
was never produced as a witness*.

And one Wintle having sworn that he saw ^{Ibid. 272.}
one of the sitting members give a bribe to
Gregg, a voter, the counsel for the petitioners
objected to the calling Gregg himself to con-
tradict Wintle's evidence: they said, a voter
is interested to disprove what may tend to
annihilate his own vote; but the Worcester
committee determined to repel the objection
to Gregg's evidence*.

The committee in the Gloucestershire case <sup>Person: laying
wagers
Gloster, 151.</sup>
came to the following resolution, viz. "that
William Moss having laid a wager at the elec-

* It does not appear, in either of these cases, that the voters had
taken the bribery oath at the poll.

Gloster, 157.

tion that Mr. Chester succeeded, which he has declared depends on the determination of the committee, is not a competent witness." And the same committee afterwards negatived a motion, 7 to 6, "that Joseph Betts having since the election laid a wager on the success of the petitioner, which he yesterday got a person to take off his hands, is a competent witness."  It being foreseen that much inconvenience would arise to both parties from these resolutions, the counsel on both sides afterwards agreed to waive the objections to witnesses, on the subject of wagers.

Philipps, 195.

But in the subsequent case of Sudbury, a question was made, whether a person who had laid a wager of about 40 l. on the event of the petition, was competent to give evidence in the cause: he was objected to by the counsel for the sitting member, "as his mind must be under a very undue bias;" and it was said, that the witness being a voter, and an active friend of the petitioner, it varied his case from that of a person who was a stranger. In answer, it was contended, that the objection had no weight: that it was frequently made in the courts below, but without effect: that C. J. Holt, over-ruled the objection in his time, upon the principle "*that a person doing wrong himself, shall not injure an innocent man, by depriving him of the benefit*"

benefit of his testimony *."—And the committee resolved, that the witness should give evidence.

In the Milborne Port case, a person was admitted to be called to prove the declarations of a Mr. Medlycot concerning the return for Milborne Port †; it was proposed to contradict that witness by calling Mr. Medlycot (who was neither charged in the petition, nor returning officer for the borough), but being objected to, after argument and clearing the court, the committee determined not to receive his evidence.

Agent charged with misconduct.

1 Doug. 134.

In the Shaftesbury case, where two witnesses declared they saw the person whom they called Punch ‡, through the hole in the door, from whence he delivered out the money, and that they know him to be one Matthews, an alderman of Sudbury; it was proposed to call Matthews himself to prove an *alibi*: but the committee resolved not to admit his evidence.

Agent charged with bribery.

2 Doug. 303.

Yet, where one Brown, an agent for one of the sitting members in the Worcester case, was charged with bribery, it was proposed to call him to contradict the evidence: this was objected to; and it was argued, that he was an incompetent witness for such a purpose. The counsel on the other side, in support of the

3 Doug. 267.

* It is laid down in the law of Nisi Prius, "that a party interested will be admitted, where he acquires the interest by his own act, after the party, who calls him as a witness, has a right to his evidence." Bull. N. P. 290.

† Supra, title "*Bribery*."

‡ Ibid.

admissi-

3 Doug. 267.
n. B.

admissibility of Brown's testimony, said, that in the case of St. Ives, the counsel for the petitioners objected to the evidence of one Robinson, an agent for the sitting members, who was charged by their witnesses with acts of bribery, but that the objection was over-ruled, and the evidence admitted. The committee resolved to admit Brown's evidence.

Returning
officer criminally
charged.
3 Doug. 228.

In the Cardigan case, the mayor, who is the returning officer, had admitted a number of persons as burgesses (whose presentments were lost), from a list entered in the council book of Cardigan, purporting to contain the names of those whose presentments were lost. Before the committee a question was made, whether this list should be read as evidence of the right of those persons; and they determined it to be inadmissible evidence. After which, and the committee having also determined that the counsel for the sitting member should identify those of his voters whose description on the poll differed from that in the book, they were going to call the mayor to prove the identity of one of those voters: it was objected that the mayor was criminally charged in the petition, and that the tendency of the evidence must be to acquit himself. In answer it was said, that nothing criminal had been proved; for he had adopted the method in conducting the poll, which had been followed at the former election. The committee resolved not to admit his evidence.

And

And Mr. Mathers, the mayor and returning officer of Worcester, was proposed to be called to disprove a charge against himself, and the other justices, that they had abused their corporate powers, and had corruptly joined in making constables for the purpose of influencing the election. He was objected to, and it was said, that as there was a *specific* charge against the mayor in the petition, and the committee had been applied to for a special report concerning his conduct, and that of the other members of the corporation, he was clearly a party to the cause and could not be a witness. It was answered, that if a man's testimony could be rendered inadmissible by a specific allegation against him in the petition, this would be a still more effectual way of depriving the sitting member of all his witnesses, than that which had been tried of destroying the competency of a witness by swearing him an agent. And it was also observed, that almost in every petition there is a charge against the returning officer; and yet in most election causes, the returning officer had been examined as a witness. The committee allowed the evidence.

In the case of Sudbury, the returning officer Philipps, 141. on delivering in the poll, with his reasons for granting a scrutiny, was called upon to give evidence respecting all the proceedings at the election. This was objected to, because he had

G g

been

been criminally charged in the petition; and his evidence to exculpate himself was not admissible; and the cases of Shaftesbury and Cardigan above mentioned were cited. On the other side it was contended, that if a criminal charge brought against persons rendered them incompetent to give evidence, it would open a wide door to fraud and injustice; that in cases of perjury and forgery, where several persons are indicted for the same offence, any or all of them may give evidence, although they are parties; and that in the cases of Downton, Cricklade, and others, the returning officers were allowed to give evidence. The committee resolved, "that he should not be examined in *this* stage of the business;" and it does not appear from the report of this case, that he was afterwards called.

Returning officer forced to make a false return.
1 Doug. 150.

But in the case of Morpeth, where the counsel were going to call one of the returning officers, to prove that they had been compelled by force to make a false return; his evidence was objected to; and it was said, that he came to excuse and explain a return, as false, which he had given under his hand and seal as true; that, if it were a false return, he was liable to an action, and therefore interested in giving any account of it. To this it was answered, that nothing said by the returning officer on the present occasion could be produced,

duced, either for or against him, in an action for a false return. The committee over-ruled the objection.

Counsel and attornies ought not to be permitted to discover the secrets of their clients, though they offer themselves for that purpose; for it is the privilege of the client, and not of the counsel or attorney. It is contrary to the policy of the law, to permit any person to betray a secret with which the law has entrusted him. But to this there are some exceptions: first, as to what such person knew before the retainer; for as to such matters they are clearly in the same situation as any other person: secondly, to a fact of his own knowledge, and of which he might have had knowledge, without being counsel or attorney in the cause.

Counsel, attorney, or agent.

Bull. N. P. 284.

4 Term Rep. 753.

And where John Coxe Hippeley, Esquire, barrister, was called on the subject of Mr. Luttrell's incapacity in the case of Milborne Port, he refused to answer any questions which might affect him, as he had constantly acted as his confidential adviser and counsel.

1 Doug. 135.

The Gloucestershire committee refused, in two cases, to let an attorney be examined of what came to his knowledge as such. But where the agent of the sitting member was produced to prove, what a voter said to him at the poll, in answer to a question then put about his freehold, he was objected to as being the attorney

Gloster, 6. 18.

Ibid. 102.

of the voter. In answer, it was said, that the question was general and not confidential. The committee allowed his evidence.

3 Lud. 451.

And, in the Norwich case, the committee resolved, that an attorney should not be examined to any matter touching the election, since the day he was first employed.

2 Frazer, 347.

Neither would the committee, in the case of Steyning, allow the agents of either party to be called to the character of the witnesses of that party.

Gloster, 25.

So, the Gloucestershire committee resolved, 9 to 5, "that, the counsel on both sides be restrained from examining the agents of the adverse party, touching the contents of deeds or writings which they have been permitted to inspect as agents."

Hearsay evidence.

Bull. N. P. 294.
2 Doug. 172.

It is a general rule, "*that hearsay is no evidence.*" And therefore the committee, in the Sudbury case, refused to let a witness be called to prove a conversation of one Delande; though it was suggested that Delande himself could not be found to be served with the speaker's warrant.

Declarations of agents, &c.
1 Doug. 134.

But to this rule there are several exceptions: Thus, in the case of Milborne Port, a witness was called to prove the declaration of Mr. Medlycot, who had considerable property in the borough, and happened to have the appointment of the returning officers, who presided at the general election in 1774. The declaration was made

made in October 1773; when Mr. Medlycot said to the witness, that as both the returning officers would be his own next year, if the gentlemen *be should* nominate at the poll should have but a dozen good votes, they should be returned. The evidence was objected to; and it was contended that, Mr. Medlycot was not a party to the petition, and that his declarations could not affect the cause of Luttrell and Wolsley: The other side alleged, that he was avowedly the person on whose interest they stood, and was to be considered as an agent for them. The committee resolved to admit the evidence.

In the Ipswich case, a witness was asked, ^{1 Lud. 38.} through what channel he received the money he disbursed on the election account? He said, Spooner bid him apply to Burney for it, and was going to relate what Burney said to him on that subject; Mr. Cator's counsel objected to the admissibility of what Burney (a third person) *said*, as far as it might affect Cator; in answer, it was said, that Spooner having been proved an agent, and he referring the witness to Burney, thereby made Burney an agent. The counsel for Mr. Cator giving up the objection, the question, "What did Burney say to you?" was allowed by the committee to be put.

In the course of the evidence concerning the ^{3 Doug. 124.} conduct of the parish officers and justices, as to the poor rates for Peterborough, a witness was going to give an account of a conversation between

him and William Strong the justice, about the reasons for making a private rate; which being objected to, the committee refused to let the counsel examine the witness to what the justice said to him respecting the rate.

3 Doug. 227.

A principal manager for the petitioner in the Cardigan case, having stated in his evidence before the committee the arguments he had urged with the mayor against the rules laid down for the conduct of the poll, was going on to mention the answer made by Mr. Cuthbert, the counsel for the sitting member, to those arguments. This was objected to, and the committee resolved, "that the answers given by Mr. Cuthbert to the argument of Mr. Watkins, are not admissible evidence."

Declarations of voters being bribed. 2 Doug. 308.

In the Shaftesbury case, witnesses were called to prove declarations of voters, who at the poll had taken the bribery oath, that they had received *Punch's* money *. This was objected to, and it was said, that it would be unjust to suffer what a man had said in conversation and without oath, to invalidate what he had so-

* It appeared from the evidence, that money, to the amount of several thousand pounds, had been given among the voters, in the following singular manner: a person, concealed under a ludicrous and fantastical disguise, and called by the name of *Punch*, was placed in a small apartment, and through a hole in the door, delivered out to the voters, parcels containing twenty guineas; upon which they were conducted to another apartment in the same house, where they found a person called *Punch's* secretary, and signed notes for the value, but which were made payable to an imaginary character, to whom they had given the name of *Glenbucket*.

lemnly sworn. But the committee admitted the evidence; yet this was denied in the Shaftesbury case in 1781. 3 Lud. 111.

And the committee, in the case of *St. Ives*, Ibid. 397. over-ruled an objection to one Wallis being called to prove, that one Noell said, in the presence and hearing of Mr. Praed (the father of one of the sitting members, and who was proved to be an agent for him and the other sitting member), that he (Praed) knew, that he (Noell) could not take the bribery oath, and that Praed said nothing to contradict him.

So, where one John Newman was called to prove a declaration made to him by one Brackstone, a voter, about having got the promise of a house from one of the sitting members for his vote. It was said, in objection to this evidence, that although the declaration (not upon oath) of a person who cannot be *obliged* to be a witness on the subject himself, is admissible in evidence to *affect such person*, yet it is not admissible as against a third party. The committee resolved, that the evidence offered could not be admitted in support of any charge against the sitting members. 3 Doug. 11.

And it was agreed in the case of *Ivelcheffer*, Ibid. 159. that evidence of the declarations of the voters who had acknowledged themselves to be bribed, could only be admitted to affect the voters themselves, and not third persons. And the committee,

3 Doug. 277.

mittee, in the Worcester case, admitted such evidence as against the voters themselves, so as to annul their votes; but not as against the sitting members, so as to disqualify them.

3 Lud. 111.

But where a witness was going to relate a fact of bribery, against a voter, by his own declaration, who had taken the bribery oath at the poll; it was objected to this evidence, that the voter's declaration, *not upon oath*, was inadmissible against his oath: and the committee refused to allow the evidence: This was in the case of Seaford in 1786.

Tampering
with witnesses.

Tampering with witnesses is declared by the house to be a high crime and misdemeanor, by the following resolution, passed at the commencement of every session, *viz.* "that if it shall appear that any person hath been tampering with any witness in respect of his evidence to be given to this house, or any committee thereof, or directly or indirectly hath endeavoured to deter or hinder any person from appearing to give evidence, the same is declared to be a high crime and misdemeanor, and this house will proceed with the utmost severity against such offender."

Perjury.

3 Inst 164.

Sir Edward Coke defines *perjury* to be a crime committed, when a lawful oath is administered, in some judicial proceeding, to a person who swears *wilfully, absolutely, and falsely* in a matter *material* to the issue or point in question,

question. It must also be corrupt, (*i. e.* committed *malo animo*,) wilful, positive, and absolute, not upon surprise, or the like. The house, at the commencement of every session, pass the following resolution against false evidence or perjury, *viz.* "that if it shall appear, that any person hath given false evidence in any case, before this house, or any committee thereof, this house will proceed with the utmost severity against such offender." And the pains and penalties inflicted by law in other cases are extended to those guilty of wilful and corrupt perjury before select committees; and power is given to a committee, either to report such persons to the house, or commit them to the custody of the serjeant at arms*. There are several cases where the house, on special reports from election committees, have committed persons for giving false evidence and prevaricating.

10 G. 3. c. 16.

28 G. 3. c. 52.

1 Doug. 194.
3 Doug. 166.
1 Lud. 470.

Subornation of perjury is the offence of procuring another to take such a false oath as constitutes perjury in the principal. In the Shaftesbury case, it appeared to the house, from the minutes of the committee, that there was the most notorious subornation of perjury practised, and the most corrupt and wilful perjury committed at the election for that borough,

Subornation
of perjury.

4 Doug. 335.

* A petitioner is not allowed to prove one of his own witnesses perjured. *Gloster*, 162.

and

and they resolved, that the several persons (whom they named) were the principal promoters and suborners of that wilful and corrupt perjury, and ordered them to be prosecuted by the attorney general for their offences.

3. Of written evidence.

Cannot compel
the production
of private pa-
pers, &c.

Gloster, 23.

Ibid. 27.

Ibid. 112.

The committee are empowered, by the 10 Geo. 3. c. 16., to send for "papers and records;" but these must be of a private nature, otherwise the committee cannot compel a production of them. Indeed, the speaker and chairman of the committee will refuse their warrants, if the papers or records appear to be of a private nature: and in the Gloucestershire case, it was moved and negatived, 10 to 4, "that the witness having acquainted the committee, that he had a deed in his pocket, left with him as trustee of a marriage settlement, but refusing to produce it without order of the committee, the witness be ordered to produce the said deed:" But they resolved, 9 to 5, not to let a witness, under the same circumstances, give parol evidence of the contents of the deed. Though afterwards, where a witness had his father-in-law's will in his pocket, which he refused to produce, though he offered to give parol evidence of its contents: it was moved and carried, 11 to 2, "that John Lucas, trustee of the will of Wil-
liam

liam Rowles, which will he refuses to produce, be examined as to its contents."

The committee, in the Buckinghamshire case, ² Lud. 602. resolved, "that they ought not to *compel* the production of title deeds."

Some committees require all the deeds, papers, and writings produced in evidence before them to remain with the committee clerk till the report is made to the house; but others will order them to be returned to the parties, after the committee clerk has made a mark on them, as having been produced in evidence. In the Downton case, ³ Lud. 195. the delivery of deeds, which had been produced in evidence, was claimed as a right, and the committee ordered them to be returned to the parties before the cause was finished.

Written evidence to be left with the committee.

In the Gloucestershire case, several deeds, wills, and other documents were produced to the committee under a necessity to be immediately returned: it was therefore resolved, *nem. con.*, "that the party producing any will, deed, or public record in evidence, shall be directed to deposit such will, deed, or record, or an attested copy thereof with the committee; in which last case, the attested copy shall be read in evidence."

Gloster, 81.

In the same case, the deputy clerk of the peace for the county, who also attended the committee as agent for the petitioner, was served with a notice by the sitting member's agent,

Ibid. 117.

EVIDENCE.

agent, to produce the duplicates of the land-tax assessments. These not being immediately wanted, and he expecting to be paid a guinea and a half per day for his attendance till they were called, the sitting member's counsel desired, that the duplicates might put in as evidence; but this was objected to, as the act required them to remain in the hands of the clerk or deputy clerk of the peace; to which the chairman observed, that, strictly to follow the letter of the act, he could not bring them out of the county; and therefore the committee resolved, "that it is the unanimous opinion of the committee, that Mr. Jephson, deputy clerk of the peace for the county of Gloucester, who is now attending under the summons of the chairman, at the desire of the sitting member, with the duplicates of the land-tax, which have been transmitted to him from the commissioners, and having produced some of them in evidence, be directed to deposit with the committee clerk, for the purpose of being used in evidence, all the land-tax duplicates in his possession."

Journals.

The house of commons being a distinct court of record, the journals thereof prove themselves, and are the only evidence of a last determination of the house.

Charters.

3 Doug. 303.

Charters, and other instruments under the great seal, are also admitted to prove themselves: Thus, in the case of Derby, when the original charter

charter was produced by one of the agents, the counsel for the sitting member desired he might be sworn, and asked from whence he had brought it; but on the part of the petitioners, it was said, and agreed on all hands, that with regard to a *common deed*, when it is more than thirty years old, the law not requiring that the subscribing witnesses should be produced to prove the execution, the person producing the deed must be sworn, and must prove that it was taken out of the proper repository; but that *charters*, and all instruments under the great seal, prove themselves, and that with regard to them no collateral evidence is required to prove their authority.

Bull. N. P. 255.

In the second Norwich case, it was proposed to read the minutes or proceedings of the former committee, in order to prove the allegations contained in the petition in the second cause; but it appearing, that the names signed to the petitions in each cause were different, the proceedings were objected to as evidence, it being contended, that no evidence of what passed in one cause could be received in another, except where the parties to each cause were the same: but the committee over-ruled the objection.

Minutes of the proceedings of committees, when evidence.

3 Lud. 469.

After the committee had over-ruled the objection above stated, the minutes of the former committee were offered in evidence, upon the oath of the clerk who entered them: the

Ibid. 473.

counsel objected to their being received, contending, that evidence of what witnesses swore ought not to be admitted, without the presence of the persons who gave the testimony, to confirm it in the same manner again; unless it could be shewn that the witnesses were dead, or not forthcoming. In answer, it was said, that the minutes were only offered to prove there were such proceedings as the petition set forth, and that they were regularly had; that the cause was tried according to the allegations and proofs, and that the court came to such a decision, as was stated in the petition in the second cause: and the committee admitted them to be read.

* Frazer, 335.

The minutes of the proceedings of committees are evidence to prove what a person swore before them, where such person afterwards dies, and his evidence is thought material before a subsequent committee.

Verdicts how far conclusive.

1 Doug. 464.

From the case of Shrewsbury before stated, it appears, that the committee held two verdicts obtained under two writs of mandamuses, as conclusive evidence of certain customs there, relating to the admission of freemen, even against those freemen who were not parties to the mandamuses.

Minutes of proceedings at quarter sessions, when evidence.

Gloster, 37.

One Thomas Bisk had been discharged as an insolvent debtor in Surry, in 1761; the discharge book was produced by the clerk of the peace,

peace, together with the schedule delivered in by the voter at the time of his discharge: it was objected that the voter having set his mark, the man who wrote his name ought to have been produced. In answer, it was said to be in the nature of a public record, and the committee in the Gloucestershire case admitted it.

And, in the Sudbury case, to prove a conviction of felony; the evidence offered was from a bound book and loose papers, containing minutes of the proceedings of the quarter sessions at Sudbury, entered by the town clerk. And the committee admitted the evidence *. Philipps, 171.

In the Cricklade case, in the course of producing evidence to prove the titles of individual voters, the following general question was argued and determined, *viz.* "Whether, in order to substantiate a vote, it was necessary to produce deeds to the committee, which had been produced at the poll, and admitted by the returning officer?" The committee resolved, "that any deed on which a voter claims to vote, such vote being objected to by the parties, must be produced to the committee, or proof given, that such deed is unduly withheld or lost, before the committee can admit other evidence, as sufficient to substantiate the vote."

Deeds.

4 Doug. 70.

* Mr. Philipps observes, that reasons *peculiar to the case* might have weighed with the committee in forming this resolution.

In

The *original* deed must be given in evidence. Gloster, 109.

In the Gloucestershire case, the deed produced was a deed to appoint new trustees of a trust, where lands were settled on trustees to appoint a schoolmaster, and other charitable uses. This was objected to, as the trust deed was the best evidence*. The committee resolved, *nem. con.*, "that the *original* deed ought to have been produced;" and they allowed further time for the purpose.

Giving deeds in evidence. Bull. N. P. 254.

As to giving deeds in evidence, the general rule is, "that the deed itself must be given in evidence, and proved by one witness at least;" for delivery being essential to a deed, it must be proved; and it is not sufficient only to prove such party's hand-writing subscribed.

Copies, *ibid.*

"*That the deed itself must be given in evidence.*" This part of the rule admits of several exceptions: for where a deed is proved to be destroyed *by fire*, a *copy* of it may be given in evidence. So if, *after notice*, the opposite party refuse to produce a deed, a copy will be good evidence.

2 Mod. 94.

Parol evidence of their contents may be given after notice.

And, as committees do not compel the production of a voter's title deeds, they will admit parol testimony of their contents, in order to support the vote, where *notice* has been *regularly* given to produce them.

* It is a general rule in all cases, "that the best evidence the nature of the thing is capable of must be given." Bull. N. P. 293.

In the Bedfordshire case, the committee came to a resolution, that no evidence of the contents of deeds should be received, unless notice had been served upon the party to produce the deeds. 2 Lud. 568.

The committee, in the Cricklade case, resolved, "that notice not having been given to the petitioner to produce the deeds containing his title to a qualification, *before* the day of taking the petition into consideration by the house, the committee are of opinion that the counsel for the sitting member should not be permitted to give parol evidence of their contents."

When notice to be given.
Petrie's Crickl.
Ca. 528.

The notice to produce a deed must be *proved* to be given *in writing*, before parol evidence will be allowed of its contents. As in the Gloucestershire case, parol evidence was offered of a deed, which was objected to, as notice had not been given *in writing* to the witness (in whose custody it was) to produce it. It was answered, that the witness owned he had a verbal notice, which was as good as one in writing. But the committee resolved, *nem. con.* "that the witness be not permitted to give parol evidence of the deed, as notice had not been given in writing to produce it."

Before parol evidence of the contents of a deed is given, a notice in writing must be proved.
Gloster, 105.

And afterwards in the same case, a notice was said to have been given to one Payne to produce a deed, but the person who gave the notice could not produce a copy of it. The committee re-

Ibid. 184.

H h

solved,

solved, *nem. con.* "that, in conformity to the former determinations of the committee, there is not sufficient proof of the notice being given to Payne to produce the deed of Matthew's estate."

The notice may
be general.
3 Doug. 345.

A general notice was given to the mayor of Derby to produce the *indentures* which, at the time of the applications for admission, had been left in his hands. The mayor had not produced the indenture of one Jones, but the petitioners produced a duplicate of it. Henry Cawley, being called to prove his actual service, said, that the first master assigned him to his (Cawley's) father, and that he served the whole seven years to him. It was proved that both the indenture and assignment, or turn-over, were delivered to the mayor. It was objected, that the assignment could not be proved by parol evidence; that a notice to produce the indenture did not imply a notice to produce the assignment or turn-over, which, for any thing that appeared to the contrary, was a separate instrument: but the committee over-ruled the objection.

To whom it
must be given.

Gloster, 44.

It was determined by the Gloucestershire committee, that a notice to produce deeds must be given to the person legally entitled to the possession of them. Thus it was moved, and negatived, 13 to 1, "that the extract of the counter-part of Spencer's lease be admitted in evidence, though regular notice was not given to Mr. Johnson, the trustee in possession of the counter-part,

part, to produce it." It was afterwards resolved, Gloster, 104.
 "that it appearing to the committee that the deeds of Gillman's estate are in mortgage to Nicholls, who had notice, but has not produced them, the committee are of unanimous opinion, that the counsel be permitted to produce parol evidence of the contents." And it was also Ibid. 107.
 moved, and carried, 11 to 2, "that the sitting member's counsel be not allowed to produce parol evidence of the contents of the voter's deeds, no regular notice having been given to the mortgagee in possession of them to produce them."

Where a voter had sent his deeds to a Mr. Ibid. 108.
 Gardner, to peruse and take extracts; these extracts were offered in evidence, and proof given of notice to the voter to produce the original deeds. This was objected to, as no notice had been given to Mr. Gardner, in whose custody the deeds were. It was said, in answer, that the legal possession of the deeds being in the voter, it was to be presumed they were returned to him. The committee admitted the extracts as evidence.

As committees will not compel the production of a voter's title deeds, an abstract of them will be allowed, after notice has been given to produce them. Thus, where a voter's wife had delivered some writings to a witness, who took an abstract of them; this abstract was offered in When abstract may be produced.
Gloster, 124.
 evidence,

evidence, proper notice having been given to the voter to produce his title deeds: but it was objected to as evidence, the voter not being present when the wife delivered them to the witness. The committee, 10 to 3, admitted the abstract as evidence.

Gloster, 123.

A copy of an abstract was offered in evidence; but as proper notice to the voter, in whose possession the original abstract was, had not been given, the committee, 7 to 6, refused to let the copy be read, or parol evidence of the contents of the abstract.

2 Lud. 603.

But where a voter is not adverse to the production of his deeds, extracts of them will not be admitted instead of the originals; nor will any evidence of deeds obtained under the threat of compulsion be admitted.

Ibid. 602.

When the draft of a deed may be read.

Gloster, 36.

An attorney proved before the Gloucestershire committee, that a deed had been executed between one Caleb and the voter, and was afterwards delivered to one Hog, who knew nothing concerning it. The draft of the deed was offered in evidence, and allowed by the committee to be read, the chairman being the only dissenting voice. — It is not stated, that any notice had been given to produce the original.

Grantor may not prove a deed.

1 Lud. 267. 231.

“*Proved by one witness at least.*” But the grantor cannot be called for that purpose, as appears from the case of Downton, where, in order to establish a deed (part of which was in pencil),

the counsel for the sitting members, after having examined one of the two subscribing witnesses, offered to call the grantor as a witness. He was objected to as a party in the question, and interested to support his own grant, under which the voter claimed a franchise. This was denied on the other side. The committee refused to admit the grantor as a witness.

It is not necessary that the witness to prove a deed be a subscribing witness, if he were present when the deed was executed. As in the second case of Cricklade: a lease was produced to shew that one Little was a leaseholder for three years. It was attested by a subscribing witness; but one Byrt, who had not subscribed it, was called to prove it, as having been present on the occasion. It was not alleged that the subscribing witness was dead, or kept out of the way. Byrt was objected to as not being the best evidence. After the committee had been deliberating some time, the counsel were called in, and asked, whether a witness to the execution of a deed might not sign it at a time subsequent to the execution? and the counsel who made the objection to Byrt's evidence agreeing that the witness might sign subsequent to the execution, and that the law had drawn no line as to the length of time after the execution within which he might subscribe; the committee allowed Byrt to give evidence as to the execution of the lease.

To prove a deed, not necessary to be a subscribing witness.
4 Doug. 72.

H h 3

And

Witnesses dead,
&c.

Doug. Reports
K. B. 89.

2 Stra. 833.

Gloster, 10.

2 T. Rep. 41.

Old deeds prove
themselves.
Bull. N. P. 255.

And where all the witnesses to a deed are dead, evidence to prove their hand-writing may be given. So, where a witness is abroad, proof of his hand-writing may be given as if he were dead: And the like where a witness becomes infamous by a conviction for forgery, &c.

Or, if one of the witnesses only is dead, and the other cannot be found, then, on proof of the hand-writing of the dead witness, the deed may be given in evidence. As where a deed was produced for 990 years; one witness being dead, his hand was proved; but the other witness was unknown. Objection was taken, that due diligence had not been used to find out the living witness. In answer, it was said, that there being no description of the witness, he could not be found, and the voter would not help them to evidence against himself. The committee admitted it in evidence.

And where a deed is in the hands of the opposite party, and he has notice to produce it, and does so, it is to be admitted in evidence *without proof of the execution of it*; for being in the hands of the opposite party, it cannot be known who the subscribing witnesses were, and so the party cannot be prepared to prove it.

If the deed be thirty years old, it may be given in evidence without any proof of the execution of it; however there ought to be some account given of the deed, where found, &c.*; and if

* Vide supra, p. 461.

there be any blemish in the deed by rasure or interlineation, the deed ought to be proved, though above thirty years old, by the witnesses, if living; and if they be dead, by proving the hand-writing of the witnesses, or at least one of them, and also the hand of the party, in order to encounter the presumption arising from the blemishes in the deed.

Erasing the name of the grantee in a deed after it is executed, and inserting the name of another grantee, avoids the deed; and though it is afterwards re-stamped, a voter is disqualified to vote in respect of the estate conveyed after such rasure and re-stamping. This appears from the Downton case, as to two voters, whose names in the conveyances of the burgages were written on erasures. The deeds had been executed to other persons, and attested; but it being discovered that these persons were disqualified to vote, their names were erased, and the voters' inserted in their stead; after which the deeds were re-executed in the presence of the same witness, under the *same stamp*. When the consideration of these votes came on before the committee, the deeds were delivered in to the clerk of the committee, and he made a mark on them as a memorandum of their having been produced in evidence, and afterwards they were returned to the party who produced them. On the day the business was concluded before the committee, the deeds were

What avoids a deed.

1 Lud. 250.

again produced to the committee, with a new stamp on them, which had been affixed since their being first produced, upon payment of the usual penalties. Whereupon it was objected by the counsel, that these voters, at the time of the election, had no right to the burgage for which they voted. And the committee, after hearing the arguments on both sides, resolved that the votes were bad.

Stamp.

3 Lud. 177.

Where several persons convey estates in which they have distinct interests, by the same deed, and such deed is only stamped with the usual stamp required for *one* deed, in that case the deed is inadmissible in evidence, and void as to all the grantors, except the first mentioned. Thus, in the Downton case in 1785: the earl of Radnor had conveyed to several voters the burgages for which they voted. His lordship's title to the burgages was founded on a lease and release made to him by nineteen different persons. The lease bargained and sold "all those their and each of their several messuages or tenements, burgages," &c. The release ran thus: "do, and each and every of them doth grant, &c. to lord Radnor, his heirs and assigns." Both the lease and release bore the usual stamps required for *one* deed. It was contended that this conveyance was not admissible in evidence, because void by the stamp acts; as each individual who was a party to the conveyance had conveyed

conveyed a separate estate and distinct interest from the others, and with which the rest of the parties had no privity or relation: That every one of those grants was to be considered as a separate deed; and as there was not a separate stamp to each, the deed itself was void by the 12 Ann. st. 2. c. 9. s. 24. The committee determined not to receive the evidence; and at the same time communicated to the parties, that they were of opinion, "that the deeds of conveyance are void by the stamp acts, as to all the parties, except the first person mentioned in each deed; and with respect to such first person, they gave at present no opinion."—It was afterwards proposed to cure the defect by getting the deeds re-stamped, and paying the penalty; but the committee declared their resolution, "not to admit fresh evidence to support the votes."

The probate of a will is evidence as to the personal estate, but not to prove a devise of lands; for all the proceedings in the spiritual court, as far as relate to lands, are *coram non judice*, for they have no power to authenticate any such devise, and therefore a copy produced under their seals is no certain evidence of a true copy. So that it being necessary to prove a devise of land, that the original will should be produced and proved by one of the subscribing witnesses, it was agreed in the early part of the Gloucestershire cause, to save expence to the parties,

Wills.

1 Roll. Ab. 678.
Bull. N. P. 245.

Ibid. 264.

Gloster, 186.

parties, that all records and probates of wills should be admitted in evidence without proving them. Under this agreement a paper, said to be a probate of the voter's father's will, was offered in evidence. The writing was dated in 1766, but not proved till 1777; from which circumstance, and the terms in which it was couched, it created a suspicion, and occasioned an objection to be made to the admissibility of it as a will. And the committee resolved, *nem. con.* "that in order to prove the title of William Haynes, under the will of his father, some suspicious circumstances appearing to the committee from the probate offered, it is necessary for the petitioner to prove to them the said will, by the production of the original, and the testimony of the subscribing witnesses, if living and to be found, otherwise by the next best evidence; and that time be given," &c.

Gloster, 188.

Duplicates of
land-tax assess-
ments.

20 G. 3. c. 17.
s. 13.

The 20 *Geo. 3. c. 17. s. 13.* (*supra*, p. 170.) directs that the duplicates of the land tax assessments in the hands of the clerk of the peace, or a true copy of them, or any part of them, signed by the clerk of the peace, and purporting to be a true copy; and also the duplicate of any assessment, in the possession of the commissioners of the land tax, or the receiver general of the county, or a copy of the duplicates signed by such commissioners, and purporting to be a true copy; shall be allowed as legal

legal evidence of the assessments, certificates, memorials, and books of entries in all cases whatever.—But, in the Bedfordshire case, where ² Lud. 327. James Crouch did not appear assessed, in that copy of the assessment which was given to the clerk of the peace, and by which the court proceeded: Yet he was so, in one of the duplicates in the hands of the commissioners of the land-tax. On which it was contended, that *all* the duplicates of the assessment were equally authentic: The committee held the vote good.

So, where it appeared that no sum was affixed to the name of W. Geary, Esq. in the duplicate left with the clerk of the peace, it was objected, that the voter was not duly assessed. But the assessor producing the original rate, in which a sum was written opposite the voter's name, and saying, if the copy he had made out for the clerk of the peace differed from that in any respect, it had been by mistake. The vote was held good. Ibid.

The poll books are the most authentic evidence of the vote; but parol evidence has been allowed to correct and explain them. The Poll-books.
Gloster, 139.
 Gloucestershire committee resolved, *nem. con.* “that the counsel should not be at liberty to adduce evidence to *contradict** the descriptions
 or

* One of the counsel for the petitioners in the Bedfordshire case, in 1784, mentioned to the committee, that a learned judge had from his memory

Gloster, 162.

or entries in the poll book ;” but, at the same time they resolved, “ that evidence might be adduced to *explain* the descriptions or entries in the poll book.”—And where the poll clerk had neglected to put the word “ jurat” opposite a voter’s name, and the check clerk was produced to prove he had been sworn, the same committee allowed his evidence.

1 Lud. 323. 356.

In the case of Bedfordshire in 1784, the evidence of the check clerk was admitted to rectify the poll book, under the following circumstances. The candidates at the election were, the earl of Upper Ossory, Mr. St. John, and lord Ongley. At the close of the poll, the numbers were for lord Ossory 1050, for Mr. St. John 974, and for lord Ongley 973; the two former were returned, and the latter petitioned against the return of Mr. St. John; and the petition stated, that the votes of two persons, who had voted for the petitioner had been entered in the poll book as given for the two other candidates; and the vote of a third, who had voted singly for the petitioner, was not entered at all in the poll book. That the mistake concerning the vote of William Lugden,

memory informed him, that in an action against the sheriff of Buckinghamshire for a false return of members for Marlow, tried many years ago before Mr. Justice Denison, in which a Mr. Moore was plaintiff, that judge had admitted the evidence of a check clerk to contradict the poll. The particular circumstances of the case he could not state.

1 Lud. 349.

one of the two first, was discovered before the close of the poll, and application was made to the sheriff to correct it, and evidence offered to him for the purpose, which he refused to receive." Before the committee, the poll book of the hundred of Stoddon was read, in which it appeared that William Lugsden had voted for lord Offory and Mr. St. John; after which they called the check clerk for that hundred, to prove the mistake of the entry. It also appeared in evidence, that the check books of both parties agreed in entering Lugsden's vote for lord Ongley, and not for Mr. St. John, as entered by the poll clerk: That Lugsden's intentions before the poll, and after, were in favour of lord Ongley, on political grounds; that after the poll he said, he had voted for him. The voter himself was not called, as the counsel for the petitioners said, they had reasons for thinking it improper evidence; but the voter was attending, and ready to be examined.—It was resolved, 1. "that the application to the sheriff was such, and made in such time, as to call upon him to attend to it;" and 2. "that the sheriff ought to have taken the vote of William Lugsden from the poll of Mr. St. John, and added it to the poll of lord Ongley.

But in the same committee, the following resolution was negatived: "that the counsel be admitted to produce evidence to correct mistakes

1 Lud. 376.

takes upon the poll book, although no such evidence was tendered to the sheriff."

1 Lud. 377.

In the same case, evidence was offered to shew, that Thomas Eyre, whose name was entered by the poll clerk as voting for lord Offory *only*, had voted for Mr. St. John likewise. This was objected to; and it was said, that the last resolution imported, that it ought first to appear, that the case had been mentioned to the sheriff; but it was admitted, that no proof of that fact could be adduced, and therefore the committee negatived this motion, *viz.* "that the counsel be admitted to produce evidence relative to Thomas Eyre."

Ibid. 382.

Edward Bennett voted for lord Offory and Mr. St. John; but, in the poll book, his vote was entered for lord Offory only, and both the check books agreed with the poll book. It appeared that notice had been given to the sheriff when Lugsden's vote was pressed upon him. The committee resolved, "that the counsel be admitted to produce evidence relative to Bennett's vote."

Yet, in the second Bedfordshire case, evidence was allowed to correct mistakes in the poll book, although no evidence was tendered to the sheriff for that purpose, and even the voters themselves were admitted to prove such mistakes*.

* Vide *supra*, p. 443.

Thus,

Thus, the freehold of W. Saunders was described to lie at Houghton. His freehold there was under value; but a witness proved, that the voter at the poll declared his freehold to be at Houghton *and Shudham*, both which exceeded 40 s. : The vote was held good. So was that of Abraham Dicks, whose freehold was described to lie at Toddington. The property at Toddington was proved to be copyhold; but a witness swore he went up to the poll with Dicks, and that the latter named Westoning as the situation of the estate. The entries of the two check clerks agreed with that of the poll.

2 Lud. 412.

Ibid. 413.

A poll, when properly authenticated, is (like a poll book at a county election) the best, but not the only evidence, either of the vote, the description of persons polled, or the number who actually did vote at an election.—Thus, in the second Cricklade case, a witness was asked, whether he had known persons admitted to vote for *new houses*? This question was objected to, as the polls were the better evidence of the fact, and therefore no other evidence ought to be allowed until it was proved, either that no polls had been taken, or that they were lost. In answer, it was said, that there was no proof of any polls having existed. That a poll is no necessary part of an election; and that when one is

Polls.

4 Doug. 67.

is taken, it is no record, and seldom preserved. To this it was replied, that though a poll is no necessary part of an election, yet it is to be presumed until the contrary is proved. The committee determined that the evidence was admissible.

2 Frazer, 333.

So, in the case of Steyning, a witness was asked how many persons voted at an election in 1761; which being objected to, as the best evidence was the poll, the committee resolved, "that it is the opinion of this committee, that there does not exist any written poll taken by the returning officer at the election in 1761." And they allowed the question to be put to the witness.

2 Frazer, 277.

But the committee in the Newark case were of opinion, "that no evidence could be renewed respecting the polls, till they were produced, or a fruitless search after them was proved."

What necessary
to authenticate
a poll.

What circumstances give authenticity to a paper as a poll, will appear from the following cases, which have arisen on that question:

1 Lud. 276.

In the case of Downton, a paper purporting to be "a true copy of the poll, &c. in 1727, found among the deeds and papers of lord Feversham's estate, was offered in evidence, but objected to, as not being properly authenticated even as a copy; no hand-writing to it being proved, or any authority annexed; nor was any

any account given of the original. It was contended in support of the evidence, that being of so antient a date, and coming from a family repository of deeds, possessed equal authority with title deeds; that the subject-matter of the paper made it an exception to the rule with respect to copies, because *the poll* is the numbering of the voters, and every writing of it may be called a copy. The committee resolved not to admit the evidence.

In the Saltsb case in 1787, a copy of the 2 Lud. 356. 202. poll taken at the general election in 1713, which had been lately discovered, among other family papers of a gentleman who had considerable property in this borough, was offered in evidence. It was in the hand-writing of a man who was clerk to the recorder of Saltsb, on which the recorder had written a memorandum; and in company with which was a letter from one of the corporation to the recorder upon that election. The admission of it as evidence was objected to, because it did not appear that any original poll had been taken or kept; nor that (if ever existing) it had been lost; nor that this copy had been examined with it; and they cited the above-mentioned case of Downton as in point. In answer, it was observed, that the copy of the poll in the Downton case was not properly accounted for, as it was not proved to be the *best* evidence by the loss of the original;

but that, here, all the papers of the borough were proved to have been lost ; that this plainly purported to be the copy of the poll, and corresponded with the return of the election. The committee resolved to admit the evidence.

1 Frazer, 129.

Where the copy of a poll of 1734, indorsed by the town clerk, was found in the corporation chest, the committee in the case of Oakhampton, after argument, determined to receive it in evidence.

2 Frazer, 310.

It appeared in the Steyning case, that the steward of the borough court usually took the poll for the constable who was the returning officer. The son of one Brown, who was steward in 1724, produced before the committee a paper, purporting to be a poll taken in that year, which he had found among his father's papers : on this paper being offered in evidence as the original poll, it was objected to as incompetent evidence ; and it was said, that the usual course was to search for such documents, either in the public repositories of the place, or amongst the representatives of the person whose duty it was to fill a particular station ; but these searches had not been made : That Brown was agent for a particular party, as appeared by the son's testimony ; and the steward of the borough was not *ex officio* returning officer ; and as the paper itself imports, that the poll was taken before one T. Foreman, his executors ought to have been

been applied to: That allowing it to be a copy, it cannot be received till the original is proved to have been lost. The counsel, in answer, said, it was proved that the steward of the borough usually took the poll, and that was not disproved, which might have been done by the present steward; and as it must be presumed, if any real polls existed, they were in his custody, he might have produced them. The committee decided, "that the paper offered in evidence was not admissible."

In the same case, the son produced another paper found with the former, and which was offered in evidence, as an original poll at the election in 1727: This paper was in the father's hand-writing; but the witness believed his father was not appointed steward till 1734. Search was proved to have been made in the parish chest for polls, but none were found; and the present steward was asked, whether he had received any polls from his predecessor? which he answered in the negative. Hereupon this paper was objected to, because the personal representatives of the returning officer had not been applied to; and the committee held the paper inadmissible. 2 Fraser, 314i

Another paper, said to be the poll of 1740, Ibid. 316; was offered in evidence; but, before it was tendered, a witness was called, who said, he saw

Brown-the steward taking the poll at the election in 1740; but, on his cross-examination, admitted a Mr. Holmes took a poll for the other party. After this, the counsel proposed to have the paper read in evidence, but the other side objected to it, observing that it bore upon the face of it stronger marks than any of the former, of an instrument taken for the use of a party, and not by a public and impartial officer of the court; for opposite to one of the votes was written, "queried by the constable," and opposite another, "refused by the constable, because his house was not good." In answer, it was said, that the paper upon the face of it purported to be the poll of 1740, had an indorsement to that effect, was in Browne's hand-writing, and mentioned the borough, the candidates, and the voters; and as to the annotations, it was usual at contested elections to take down the objections made to particular votes; and they could not be more properly recorded than in the body of the poll. The committee resolved, "that it is the opinion of this committee, that there is sufficient reason to suppose, that there does not exist any original poll taken by the returning officer at the election in 1740:" And, "that the paper offered, be received as authentic minutes of the election in 1740, for the borough of Steyning."—The last resolution

resolution was afterwards rescinded by the committee.

After the decision of the committee, that the paper offered in evidence should be received "as authentic minutes" of the election, another paper was offered, under nearly the same circumstances as the former, said to be the poll of 1741. After argument, the committee resolved, "that the paper offered by the counsel as the poll taken at the election for Steyning, in the year 1741, be not received as such." But at the time they communicated this resolution to the counsel, the chairman observed, that the counsel were at liberty to offer the paper in any other way. On this the paper was offered as the next best evidence of what passed at the election in 1741: This being objected to, and the matter argued, the committee refused to receive it as evidence; and informed the counsel, that they had rescinded the last resolution respecting the paper offered as the poll of 1740, being received as authentic minutes of the election in that year. There were two other papers offered as evidence under nearly the same circumstances as the former, but they were both rejected by the committee.

It was made a question in the Cardigan case, whether a list, entered in the council book of Cardigan, purporting to contain the names of burgesses, whose presentments had been lost,

Corporation
books.

3 Doug. 191.

should be read as evidence of the right of persons who had polled on the authority of that list. The committee, after hearing the evidence and arguments of counsel, determined, that the list was not admissible evidence.

3 Lud. 573.

In the second Carlisle case, a book found in the corporation chest was offered to prove a list of freemen of no guild. This was objected to, as not the *best* evidence upon the subject, because the guild books were the highest authority in these matters: That the corporation had neither proper authority, nor the means of ascertaining who were members of the guild or not: It was answered, that the guild books could not prove, who were *not* members of their body, which was the object in producing this book: That all the guild books of the same periods were not existing, and those remaining not complete: That they might, in such case, be produced to contradict this book, if capable; but that, *prima facie*, it stood as authentic evidence. The court received the book in evidence.

Rent-rolls.
3 Lud. 206.

In the case of Downton, in 1785, a paper was offered in evidence, which appeared to be a rent-roll of the lordship of Downton, for the years 1738, 39, and 40. It was found, during the trial of the cause, in a box of papers relating to the borough: The box was in the house of the countess dowager of Radnor, where it had been deposited many years; which house had belonged

to lord Faversham, her first husband. This paper was proved to be in the hand-writing of one Leonard Snow of Downton, who was employed by Mr. Ashe in the way of a land-steward. Lord Faversham bought the lease of the manor from Ashe in 1742. The admissibility of the paper in evidence was objected to, and the question argued on both sides; after which, the committee determined to receive the paper in evidence.

In the case of Horsham, the steward of the manor (in consequence of a notice to that effect) was called on to produce all the court-rolls in his possession; and he having admitted that he had no court-roll, or minute of the proceedings of a court, of an earlier date than 1699, except a roll of 1611, and a rental of 1686; they offered a book, intituled, *Burgus et Manerium de Horsham*, 1650, 1768, which, they said, came from the possession of lady Irvine (who formerly had considerable property in the borough), and contained, among other articles, items from the court-rolls, during the time that the originals were allowed to be missing. The evidence was objected to; but the committee admitted it.

The parish books, wherein are entered copies of the poor-rates, agreeable to the 13th section of the Windsor act, are allowed to be produced as evidence, when the original rates can-

Court-rolls.

2 Frazer, 53.

Poor-rates.

17 G. 2. c. 38.
s. 13.

1 Doug. 359.

not be found. As in the Dorchester case, one of the overseers was called, and offered to produce the parish books, in which the rates for several years were entered, together with the sums of money collected. This was objected to, as it was said the original rates were better evidence. In answer, it was said, that all the parish officers had been served with notices to produce the original rates, but they could not be found: And the committee over-ruled the objection.

Return to a
commission.

1 Lud. 265.

But a return of the steward of the borough of Downton for 1732, to certain commissioners "appointed by letters patent to take a survey of the officers of courts of justice and their fees," in which return the steward states (*inter alia*), "that the *steward* has the return of writs to parliament," is not evidence on a question relating to the returning officer, as was determined by the committee in the Downton case.

Register of
marriage.

Gloster, 136.
Philipps, 198.

The committee in the Gloucestershire case allowed parol evidence to be given to contradict a marriage register: Thus, the register of the marriage of a voter in December 1776 was produced; a witness offered to prove that he had heard the wife say, in the presence of the husband, that they were married before that period. This was objected to; but the committee, 12 to 1, determined the evidence to be admissible.

A banker

A banker in the Norwich cause, being under examination upon the business of a subscription fund, which was charged by the petitioners to have been applied to bribing the electors, was asked, if he had kept the drafts by which the money was exhausted; and answering in the affirmative, was required to produce them. The right of the counsel for the sitting member to require this production was objected to; and it was argued, that before deeds or papers of parties were to be produced, it was incumbent on the party calling for them to shew an interest in them. The bankers are connected with their employers in a confidential manner, like attornies and their clients, and were entitled to a similar privilege of secrecy, if those employers desired it. In answer it was said, that the principles which the others relied upon related only to private civil suits between parties, and not to public crimes, which a charge of bribery was: The committee determined that the drafts should be produced.

Banker's drafts
and accounts,
when allowed
as evidence.

3 Lud. 448.

Afterwards a dispute arose, whether the account current in the banker's book containing the disbursements of the money, should be produced; and the committee resolved, "that the account book should be produced; care being taken, to the banker's satisfaction, that no other article in the book be inspected, but this in question."

Ibid. 450.

C O S T S.

I. When parties are liable to costs.

II. How ascertained and recovered.

I When parties are liable to costs.

IN order to discourage persons from presenting frivolous or vexatious petitions, or setting up frivolous or vexatious defences, the eighteenth * section of the 28 Geo. 3. c. 52. (supra p. 399.) directs the committee, at the time they report to the house their final determination on the merits of any petition, to report at the same time, whether the petition appeared to be frivolous or vexatious; and whether the opposition appeared to them to be frivolous or vexatious; and, where no party appears before them in opposition to the petition, then, whether the election or return, or the alleged omission or insufficiency of the return complained of in the petition, did or did not appear to them to be vexatious or corrupt.

Parties opposing petitions reported vexatious or frivolous;

And by the 19th section of the same act, " whenever any such committee shall report to

* The regulations by this, and the six following sections of the act, do not apply to petitions relating *solely* to the right of election, or of nominating, &c. returning officers. Vide the 32d section of the act, supra p. 354.

the

the house, with respect to any such petition, that the same appeared to them to be frivolous or vexatious, the party or parties (if any) who shall have appeared before the committee in opposition to such petition, shall be entitled to recover from the person or persons, or any of them, who shall have signed such petition, the full costs and expences which such party or parties shall have incurred in opposing the same; such costs and expences to be ascertained in the manner hereinafter directed."

20. "Whenever any such committee shall report to the house, with respect to the opposition made to such petition by any party or parties who shall have appeared before them, that such opposition appeared to them to be frivolous or vexatious, the person or persons who shall have signed such petition shall be entitled to recover from such party or parties, or any of them, with respect to whom such report shall be made, the full costs and expences which such petitioner or petitioners shall respectively have incurred in prosecuting their said petition; such costs and expences to be ascertained in the manner hereinafter directed."

and petitioners reported to have been vexatiously or frivolously opposed, to be entitled to costs and expences.

21. "Whenever, in any case where no party shall have appeared before such committee in opposition to such petition, such committee shall report to the house, with respect to the election or return, or to the alleged omission of
a return,

Where no party appears in opposition to any such petition, the costs and expences to be paid by the sitting members, &c.

a return, or to the alleged insufficiency of a return, complained of in any such petition, that the same appeared to them to be vexatious or corrupt, the person or persons who shall have signed such petition shall be entitled to recover from the sitting member or sitting members (if any) whose election or return shall be complained of in such petition, such sitting member or sitting members not having given notice as aforesaid * of his or their intention not to defend the same, or from any other person or persons whom the house shall have admitted or directed to be made a party or parties to oppose such petition, the full costs and expences which such petitioner or petitioners shall have incurred in prosecuting their said petition; such costs and expences to be ascertained in the manner hereinafter directed."

* Frazer, 236.

Where a petition is presented by the advice of counsel, but afterwards the petitioners decline going into evidence to support the allegations contained in it, finding themselves mistaken in a point of law, the committee will report it frivolous and vexatious. As in the case of Bodwin, in 1792: It appeared by the charters, that the presence of the mayor was necessary in the election of a successor to his office; but the person who was chosen mayor in 1787, not attending at the day of election in 1788, the corporation was unable to proceed: An application on that account was made to the court of king's bench,

* Vide supra, p. 342.

and

and a *mandamus* obtained for electing a mayor ; but all the persons required by law did not even then assemble. Afterwards, on the 3d of June 1790, seventeen persons, out of thirty-seven, assembled : Several of these protested against the proceedings of the meeting, but the rest elected Mr. Hext mayor, under a radical defect. A *quo warranto* was at issue at the time the committee sat. The petitions stated, that Hext acted as returning officer at the election, and took a poll, and made the return ; but the petitioners insisted that he was not the *legal* returning officer, and therefore the election could not be had before him, but was void. The counsel for the petitioners stated to the committee, that as he *then* understood it to be the law of parliament (though he had formerly given an opinion the other way), that Hext being the mayor *de facto*, though not *de jure*, might act as returning officer, he did not intend to bring forward evidence to substantiate the allegations of their petitions, finding that they were mistaken in point of law. Hereupon the counsel for the sitting members moved the committee, that the petitions might be reported frivolous and vexatious. But the counsel for the petitioners stated, that their clients had had two opinions of counsel, upon whose advice they acted ; and that they desisted the moment they were convinced

vinted of their error: The committee reported the petitions frivolous and vexatious.

a Frazer, 157.

So, where the evidence offered in support of the petitioner's case is determined to be inadmissible, the committee will also report it frivolous and vexatious. Thus, in the case of the county of Sutherland, Mr. Gordon and Mr. MacLeod had petitioned the house against the return of lieutenant-general Grant. The evidence on which the case of Mr. Gordon principally depended having been held by the committee to be inadmissible, his counsel withdrew any pretension to the seat, and therefore gave the committee no farther trouble. After this, the counsel on behalf of Mr. MacLeod also said, that he had no evidence to offer to the committee, his intention being to bring the merits of Mr. MacLeod's petition forward, only in the event that general Grant was declared ineligible. Upon this, the counsel for general Grant said, that as both the petitioners had no admissible evidence to produce, he must recall to the memory of the committee the above act, which enabled them by a special report to award costs to his client. The committee determined the petition of Mr. MacLeod to be frivolous and vexatious; but not that of Mr. Gordon.

But where a petitioner is unable to go into his case on account of the death of material witnesses

nesses since the petition was presented, and giving timely notice to the sitting member to prevent the expence of preparing his defence; the committee will not report the petition frivolous or vexatious. This appears from the Honiton ^{a Fraser, 245.} case, where the counsel for the petitioner said, that the evidence which his client had to produce was laid before him, and he then thought the case a very proper one to be brought before a committee, as there was only a majority of four; but an act of God, which could neither be foreseen or prevented, had deprived his client of five of the most material witnesses, and had thus, without his fault, taken from him the means of substantiating his claim. He added, that as the fact would not be controverted, and timely notice had been given to the sitting member in order to prevent the expence of preparing his defence, he trusted the committee would be of opinion that his client had not acted in a manner either frivolous or vexatious. The counsel for the sitting member, after acknowledging the death of the five witnesses, said, he was not instructed to press the committee to report in such a way as to entitle his client to costs. After the committee had inquired from the solicitor for the petitioner, whether he or the petitioner knew of the death of these five witnesses when the petition was renewed; and being answered in the negative, the committee determined that the petition did *not* appear frivolous or vexatious.

II. How ascertained and recovered.

28 G. 3. c. 52.

How the costs
and expences
are to be ascer-
tained.

The manner of ascertaining and recovering the costs is pointed out by the twenty-second section of the above act of 28 Geo. 3. c. 52. and is this: That in the several cases therein mentioned, "the costs and expences of prosecuting or opposing any such petition shall be ascertained in manner following; (that is to say) that on application made to the speaker of the house of commons, by any such petitioner or petitioners, or party or parties, as before mentioned, for ascertaining such costs and expences, he shall direct the same to be taxed by two persons, of whom the clerk or clerk-assistant of the house shall always be one, and one of the following officers, not being a member of the house, shall be the other; (that is to say) masters in the high court of chancery, clerks in the court of king's bench, prothonotaries in the court of common pleas, and clerks in the court of exchequer; and the persons so authorized and directed, to tax such costs and expences shall, and they are hereby required to examine the same, and to report the amount thereof to the speaker of the said house, who shall, on application made to him, deliver to the party or parties a certificate, signed by himself, expressing the amount of the costs and expences allowed in such report; and the persons so appointed to tax such costs, and

and report the amount thereof, are hereby authorized to demand and receive, for such taxation and report, such fees as shall be, from time to time, fixed by any resolution of the house."

23. "That it shall and may be lawful for the party or parties entitled to such costs and expences, or for his, her, or their executors or administrators, to demand the whole amount thereof, so certified as above, from any one or more of the persons respectively who are hereinbefore made liable to the payment thereof, in the several cases hereinbefore mentioned: and in case of non-payment thereof, to recover the same by action of debt in any of his majesty's courts of record at Westminster; in which action it shall be sufficient for the plaintiff or plaintiffs to declare, that the defendant or defendants is or are indebted to him or them in the sum to which the costs and expences, ascertained in manner aforesaid, shall amount, by virtue of this act; and the certificate of the speaker of the house of commons, under his signature, of the amount of such costs and expences, together with an examined copy of the entries in the Journals of the house of commons, of the resolution or resolutions of the said select committee or committees, shall be deemed full and sufficient evidence in support of such action of debt: Provided always, that in every such action of debt, no wager of

If costs, &c. be not paid on demand, they may be recovered by action of debt, &c.

K k

law,

Judgment in such actions to entitle the party to costs.

law, or more than one imparlance, shall be allowed; and the party or parties in whose favour judgment shall be given in any such action, shall recover his or their costs."

Persons paying costs may recover a proportion thereof from any other persons liable thereto.

24. "That in every case where the amount of such costs and expences shall have been so recovered from any person or persons, it shall and may be lawful for such person or persons to recover in like manner from the other persons, or any of them (if such there shall be), who shall be liable to the payment of the said costs and expences, a proportionable share thereof, according to the number of persons so liable."

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APPENDIX.

- I. *Writs, precept, and returns.*
- II. *Certificate to be signed by two members, on a vacancy happening during the recess.*
- III. *Acts to be read at elections.*
- IV. *Oaths.*
- V. *Member's qualification, and notice on questioning same.*
- VI. *List of objections to county voters.*
- VII. *Appointments and notice relative to; with the recognizance to be entered into by petitioners and their sureties.*
- VIII. *Warrants and orders for witnesses, papers, and records.*
- IX. *Acts for regulating elections in London, Norwich, and Coventry.*

I. *Writs, precept, and returns.*

GEORGE the third, &c. to our right trusty and right well-beloved Edward lord Thurlow, lord high chancellor of our kingdom of Great Britain, greeting: Whereas we, by the advice of our privy council, for certain and urgent causes concerning us, the good estate and commonwealth of this our realm, and of the church of England, and for the good order and continuance of the same, have appointed and

Warrant for
issuing writs on
a general election.

K k 2

ordained

ordained a parliament to be holden at our city of Westminster, the day of next ensuing; in which case divers and sundry writs are to be issued forth under our great seal of Great Britain, as well for the prelates, bishops, and nobility of this our realm, as also for the election of knights, citizens, and burgesses of the several counties, cities, and boroughs, and towns of the same, to be present at the said parliament at the day and place aforesaid: Whereupon we will and command you forthwith upon the receipt hereof, and by warrant of the same, to cause such and so many writs to be made and sealed under our great seal, for the accomplishing the same, as in like cases hath been heretofore used and accustomed: And this bill, signed with our own hand, shall be as well unto you, as to every such clerk and clerks as shall make and pass the same, a sufficient warrant or discharge in that behalf given.

Writ to the sheriff on a general election.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, to the sheriff of the county of Oxford, greeting: Whereas, by the advice and assent of our council, for certain arduous and urgent affairs concerning us, the state and defence of our kingdom of Great Britain, and the church, we have ordered a certain parliament to be holden at our city of Westminster, on the day of next ensuing, and there to treat and have conference with the prelates, great men, and peers of our realm; we command and strictly enjoin you, that (proclamation being made of the day and place aforesaid, in your next county court to be holden after the

the receipt of this our writ) two knights, of the most fit and discreet of the said county, girt with swords; and of the university of Oxford, two burgesſes *; and of every city of that county, two citizens; and of every borough in the same county, two burgesſes, of the most sufficient and discreet, freely and indifferently, by those who at such proclamation shall be present, according to the form of the statutes in that case made and provided, you cause to be elected; and the names of those knights, citizens, and burgesſes, so to be elected (whether they be present or absent), you cause to be inserted in certain indentures to be thereupon made between you and those who shall be present at such election; and them at the day and place aforesaid you cause to come, in such manner, that the said knights for themselves and the commonalty of the same county, and the said citizens and burgesſes for themselves and the commonalty of the said university, cities, and boroughs respectively, may have from them full and sufficient power to do and consent to those things which then and there, by the common council of our said kingdom (by the blessing of God), shall happen to be ordained upon the aforesaid affairs; so that, for want of such power, or through an improvident election of the said knights, citizens, or burgesſes, the aforesaid affairs may in no wise remain unfinished: Willing, nevertheless, that neither you, nor any other sheriff of this our said kingdom, be in anywise elected; and that the election, in your full county so made distinctly and openly, under your

* The writs to the sheriffs are all in the same form, except that in *this*, and in *that* to the sheriff of Cambridgeshire, there is a clause for the election of members for the respective universities. 1 Doug. 450.

APPENDIX.

seal, and the seals of those who shall be present at such election, you do certify to us in our chancery, at the day and place aforesaid, without delay, remitting to us one part of the aforesaid indenture annexed to these presents, together with this writ. Witness ourself, at Westminster, the day of in the year of our reign.

(To be endorsed when returned,)

The execution of this writ appears in certain schedules hereunto annexed.

A. B. sheriff.

Return for a
county.

THIS INDENTURE *, made in the full county of York, holden at the castle of York in and for the said county, on Wednesday the day of in the year of the reign of our sovereign lord George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and in the year of our Lord 17 ; *Between* A. B. Esq. sheriff of the said county, of the one part; and C. D. E. F. &c. and many other persons of the county aforesaid, and electors of knights to parliament for the said county, of the other part; *Witnesseth*, that proclamation being made by the said sheriff, by virtue of and according to a writ of our sovereign lord the king, directed to the said sheriff, and hereunto annexed, for the electing of two knights, of the most fit and discreet of the said county, girt with swords, to serve in a certain parliament to be holden at the city of Westminster, on the day of next ensuing: The said parties to these

* To be engrossed on the usual stamp for deeds, now 7s.

presents,

presents, together with the major part of the electors for the county aforesaid, present in the full county of York, at the castle of York aforesaid, on the day of the date hereof, by virtue of the said writ, and according to the force and effect of divers statutes in that case made and provided, *have*, in the said full county of York, by unanimous assent and consent, freely and indifferently elected and chosen two knights, of the most fit and discreet of the said county, girt with swords, to wit, Sir G. S. Baronet, and H. D. of, &c. Esq. to be knights to the said parliament so to be holden at the day and place in that behalf hereinbefore mentioned, for the commonalty of the county of York; *giving and granting* to the aforesaid knights full and sufficient power, for themselves and the commonalty of the same county, to do and consent to those things which, in the said parliament, by the common council of the kingdom of our said lord the king (by the blessing of God), shall happen to be ordained upon the affairs in the said writ specified. *In witness* whereof, the parties to these presents have interchangeably put their hands and seals the day, year, and place first above written.

YORKSHIRE, to wit. A. B. Esq. Sheriff of the said county, To the mayor of the borough of S. in the said county, greeting. *Know*, that I have received a certain writ of our lord the king to me directed, the tenor whereof following [here copy the writ verbatim]: *Therefore*, by virtue of the said writ, I require you that you forthwith cause two burghesses to be elected for the said borough, according to the command of the said writ; and how this my warrant shall be executed,

Precept to the
returning officer
of a borough.

you shall make known to me immediately after the said election made, so that I may certify the same, together with the said writ and this precept, to our lord the king in his chancery forthwith; hereof fail not. *Given* under the seal of my office, dated the day of 17 .

A. B. sheriff.

(To be endorsed when returned,)

The execution of this precept appears in a certain schedule hereunto annexed.

C. D. mayor.

Return for a
borough.

THIS INDENTURE, made at the guildhall of the borough of S. in the county of Y. the day of in the year of the reign of our sovereign lord George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and in the year of our Lord 17 ; *Between* A. B. mayor of the borough of S. in the county of Y. and the commonalty of the same borough, of the one part; and C. D. Esq. sheriff of the said county of Y. of the other part; *Witnesstb*, that by virtue of a precept to the said mayor, directed and delivered by the said sheriff, under the seal of his office, bearing date the day of instant, for the election of two burgeses for the said borough, to serve in the parliament to be holden at the city of Westminster on the day of next ensuing (proclamation being first made of the day and place, as by the said precept is directed); They the said mayor and commonalty of the said borough, and others interested in the said election, according to the tenor of the said precept, have elected and chosen E. F. and G. H. Esquires,

to be burgesſes to ſerve for the ſaid borough: And do hereby *give* and *grant* to the ſaid burgesſes ſo choſen, full power and authority for themſelves, and the commonalty of the ſaid borough, to do and conſent to thoſe things which, at the ſaid parliament, by the common council of the realm (by the bleſſing of God) ſhall happen to be ordained. *In witneſs* whereof, the ſaid mayor and commonalty, and others electors of the ſaid borough, to one part of theſe indentures to be delivered to the ſaid ſheriff, have ſet the common ſeal of the ſaid borough; and to the other part of the ſame indentures, to remain with the ſaid mayor and commonalty, the ſheriff hath ſet the ſeal of his office, the day and year firſt above written.

II. Certificate to be ſigned by two members, on a vacancy happening during the reſeſs.

“ WE whoſe names are underwritten, being two members of the houſe of commons, do hereby certify, That *M. P.* late a member of the ſaid houſe, ſerving as one of the knights of the ſhire for the county of [or as the *caſe may be*], died upon the day of [or is become a peer of Great Britain], and that a writ of ſummons hath been iſſued, under the great ſeal of Great Britain, to ſummon him to parliament [or as the *caſe may be*]; and we give you this notice, to the intent that you may iſſue your warrant to the clerk of the crown, to make out a new writ for the election of a knight to ſerve in parliament for the ſaid county of

Vide the ſchedule to the
24 G. 3. c. 26.

[or

[or as the case may be], in the room of the said
M. P. Given under our hands, this day of

*To the Speaker of
the House of Commons."*

Note: That in case there shall be no speaker of
the house of commons, or of his absence
out of the realm, such certificate may be
addressed to any one of the persons ap-
pointed according to the directions of the
act of the 24 Geo. 3. c. 26. supra, p. 4.

III. *Acts to be read at elections.*

2 G. 3. c. 24.

ANNO 2^o GEORGH II. CAP. 24.

*" An Act for the more effectual preventing bribery
and corruption in the elections of members to
serve in parliament.*

Whereas it is found by experience, that the
laws already in being have not been sufficient
to prevent corrupt and illegal practices in the
election of members to serve in parliament:
For remedy, therefore, of so great an evil, and
to the end that all elections of members to par-
liament may hereafter be freely and indifferently
made, without charge or expence, Be it enacted
by the king's most excellent majesty, by and
with the advice and consent of the lords spiritual
and temporal, and commons, in this present par-
liament assembled; and by the authority of the
same, That, from and after the twenty-fourth
day of June in the year of our Lord 1729,
upon every election of any member or members
to serve for the commons in parliament, every
freeholder,

freeholder, citizen, freeman, burghers, or person having or claiming to have a right to vote or be polled at such election, shall, before he is admitted to poll at the same election, take the following oath, (or, being one of the people called *Quakers*, shall make the solemn affirmation appointed for *Quakers*,) in case the same shall be demanded by either of the candidates, or any two of the electors; that is to say,

Electors of parliament men to take the following oath, if demanded.

“I, A. B. do swear, (or, being one of the people called *Quakers*, I, A. B. do solemnly affirm,) I have not received, or had, by myself or any person whatsoever in trust for me, or for my use and benefit, directly or indirectly, any sum or sums of money, office, place, or employment, gift, or reward, or any promise or security for any money, office, employment, or gift, in order to give my vote at this election, and that I have not been before polled at this election.”

Electors' oath.

Which oath or affirmation the officer or officers presiding or taking the poll at such election is and are hereby empowered and required to administer *gratis*, if demanded as aforesaid, upon pain to forfeit the sum of fifty pounds of lawful money of Great Britain, to any person that shall sue for the same, to be recovered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, wherein no essoin, protection, wager of law, or more than one imparlance shall be admitted or allowed; and if the said offence shall be committed in that part of Great Britain called Scotland, then to be recovered, together with full costs of suit, by summary action or complaint before the court of session, or by prosecution before

Presiding officers to administer it, on forfeiture of 50*l*.

before the court of justiciary there, for every neglect or refusal so to do; and no person shall be admitted to poll, till he has taken and repeated the said oath in a public manner, in case the same shall be demanded as aforesaid, before the returning officer, or such others as shall be legally deputed by him.

Sheriff or other
returning officer
admitting any
to be polled
before sworn,
to forfeit 100 l.

2. And be it further enacted, That if any sheriff, mayor, bailiff, or other returning officer, shall admit any person to be polled without taking such oath or affirmation, if demanded as aforesaid, such returning officer shall forfeit the sum of one hundred pounds, to be recovered in manner aforesaid, together with full costs of suit; and that if any person shall vote or poll at such election, without having first taken the oath, or if a *Quaker*, having made his affirmation as aforesaid, if demanded, such person shall incur the same penalty which the officer is subject to for the offence above mentioned.

Voters to incur
the like penalty.

Returning
officers after
reading the
writ to take the
following

3. And be it further enacted by the authority aforesaid, That every sheriff, mayor, bailiff, headborough, or other person, being the returning officer of any member to serve in parliament, shall immediately after the reading the writ, or precept for the election of such member, take and subscribe the following oath, viz.

Oath.

“ I, A. B. do solemnly swear, That I have not, directly or indirectly, received any sum or sums of money, office, place, or employment, gratuity or reward, or any bond, bill, or note, or any promise or gratuity whatsoever, either by myself or any other person to my use, or benefit, or advantage, for making any return at the present election of members to serve in parliament; and that I will return such person or persons

persons as shall, to the best of my judgment, appear to me to have the majority of legal votes."

Which oath any justice or justices of the peace of the said county, city, corporation, or borough where such election shall be made, or, in his or their absence, any three of the electors are hereby required and authorized to administer; and such oath, so taken, shall be entered among the records of the sessions of such county, city, corporation, and borough as aforesaid.

4. And be it enacted by the authority aforesaid, That such votes shall be deemed to be legal, which have been so declared by the last determination in the house of commons; which last determination, concerning any county, shire, city, borough, cinque-port, or place, shall be final to all intents and purposes whatsoever, any usage to the contrary notwithstanding.

What votes shall be deemed legal.

5. And be it further enacted by the authority aforesaid, That if any returning officer, elector, or person taking the oath or affirmation hereinbefore mentioned, shall be guilty of wilful and corrupt perjury, or of false affirming, and be thereof convicted by due course of law, shall incur and suffer the pains and penalties which by law are enacted or inflicted in cases of wilful and corrupt perjury.

6. And be it further enacted by the authority aforesaid, That no person convicted of wilful and corrupt perjury, or subornation of perjury, shall, after such conviction, be capable of voting in any election of any member or members to serve in parliament.

Persons convicted of wilful perjury incapable of voting.

7. And be it further enacted by the authority aforesaid, That if any person, who hath or claimeth

Persons taking money or reward for their

vote, &c. forfeit
500 l. and are
disabled to
vote, &c.

claimeth to have, or hereafter shall have or claim to have, any right to vote in any such election, shall, from and after the said 24th day of June, which shall be in the year of our Lord 1729, ask, receive, or take any money, or other reward, by way of gift, loan, or other device, or agree or contract for any money; gift, office, employment, or other reward whatever, to give his vote, or to refuse or forbear to give his vote in any such election; or if any person by himself, or any person employed by him, doth or shall by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure any person or persons to give his or their vote or votes, or to forbear to give his or their vote or votes in any such election; such person so offending in any of the cases aforesaid shall, for every such offence, forfeit the sum of five hundred pounds of lawful money of Great Britain, to be recovered as before directed, together with full costs of suit: And every person offending in any of the cases aforesaid, from and after judgment obtained against him in any such action of debt, bill, plaint, or information, or summary action or prosecution, or being any otherwise lawfully convicted thereof, shall for ever be disabled to vote in any election of any member or members to parliament; and also shall for ever be disabled to hold, exercise, or enjoy any office or franchise, to which he and they then shall or at any time afterwards may be entitled, as a member of any city, borough, town-corporate, or cinqueport, as if such person was naturally dead.

Offenders in 12
months after
the election dis-

8. And be it further enacted by the authority aforesaid, That if any person offending against
this

this act shall, within the space of twelve months next after such election as aforesaid, discover any other person or persons offending against this act, so that such person or persons so discovered be thereupon convicted, such person so discovering, and not having been before that time convicted of any offence against this act, shall be indemnified and discharged from all penalties and disabilities which he shall then have incurred by any offence against this act.

covering others,
indemnified.

9. And, for the more effectual observance of this act, be it enacted, That all and every the sheriffs, mayors, bailiffs, and other officers, to whom the execution of any writ or precept for electing any member or members to serve in parliament shall belong or appertain, shall and are hereby required, at the time of such election, immediately after the reading such writ or precept, read or cause to be read openly before the electors there assembled, this present act, and every clause therein contained; and the same shall also openly be read once in every year, at the general quarter sessions of the peace, to be holden next after Easter, for any county or city; and at every election of the chief magistrate in any borough, town-corporate, or cinque-port; and at the annual election of magistrates and town counsellors for every borough within that part of Great Britain called Scotland.

This act to be
read by every
returning officer
after reading the
writ, and at the
quarter sessions
after Easter.

10. And be it further enacted by the authority aforesaid, That every sheriff, under-sheriff, mayor, bailiff, and other officer, to whom the execution of any writ or precept for the electing of members to serve in parliament doth belong, for every wilful offence, contrary to this act,

Wilful offence
forfeits 50*l*.

act, shall forfeit the sum of fifty pounds, to be recovered, together with full costs of suit, in the manner before directed.

Prosecution to
commence
within two
years.

11. Provided always, and it is hereby declared and enacted by the authority aforesaid, That no person shall be made liable to any incapacity, disability, forfeiture, or penalty by this act laid or imposed, unless prosecution be commenced within two years after such incapacity, disability, forfeiture, or penalty shall be incurred, or in case of a prosecution, the same to be carried on without wilful delay; any thing herein contained to the contrary notwithstanding *."

3 G. 3. c. 15.

ANNO 3^o GEORGII III. CAP. 15.

"An act to prevent occasional freemen from voting at elections of members to serve in parliament for cities and boroughs.

Whereas great abuses have been committed in making freemen of corporations, in order to influence elections of members to serve in parliament, to the great infringement of the rights of freemen of such corporations, and of the freedom of elections; to prevent such practices for the future, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in parliament assembled, and by the

* To explain and amend this clause, the 9 Geo. 2. c. 38. directs, that no person shall be liable to any penalty, &c. imposed by the above act, "unless actually and legally arrested, summoned, or otherwise served" with process within two years; if such service is not prevented by any person absconding or withdrawing out of this kingdom.

authority

authority of the same, that, from and after the first day of May 1763, no person whatsoever claiming as a freeman to vote at any election of members to serve in parliament for any city, town, port, or borough in England, Wales, and the town of Berwick upon Tweed, where such voter's right of voting is as a freeman-only, shall be admitted to give his vote at such election, unless such person shall have been admitted to the freedom of such city, town, port, or borough twelve kalendar months before the first day of such election; and if any person shall presume to give his vote as a freeman at any election of members to serve in parliament, contrary to the true intent and meaning of this act, he shall, for every such offence, forfeit and pay the sum of one hundred pounds to him, her, or them, who shall inform and sue for the same; and the vote given by such person shall be void and of no effect.

On penalty of
100*l*.

2. Provided always, That nothing herein contained shall extend, or be construed to extend, to any person entitled to his freedom by birth, marriage, or servitude, according to the custom or usage of such city, town, port, or borough.

Persons entitled
to their free-
dom, by birth,
marriage, or
servitude, ex-
cepted.

3. And be it further enacted by the authority aforesaid, That if any mayor, bailiff, sheriff, town clerk, or other officer of any corporation, or other person whatsoever, shall wilfully and fraudulently antedate, or cause to be antedated, any admission of any freeman, such mayor, bailiff, sheriff, town clerk, officer, or other person, shall, for every such offence, forfeit and pay the sum of five hundred pounds to him, her, or them, who shall inform and sue for the same.

Penalty of an-
tedating the ad-
mission of any
freeman, 500*l*.

L1

4. And

The books and papers of admission of freemen to be open to inspection, upon demand of a candidate, his agent, or two freemen, upon payment of 1 s.

and copies and minutes of the admission to be given, paying reasonably for writing the same ;

and the books, &c. to be produced, if demanded, at every election,

on penalty of 100l.

4. And be it further enacted by the authority aforesaid, That the mayor, bailiff, sheriff, town clerk, or other officer of any corporation, having the custody of, or power over, the records of the same, shall, upon the demand of any candidate, or his agent, or any two freemen on the payment of one shilling, permit such candidate, agent, or freemen, between the hours of nine in the morning and three in the afternoon, at any time before, and within one month after any such election as aforesaid, to inspect the books and papers wherein the admission of freemen shall be entered ; and to have copies or minutes of the admission of so many freemen as such candidate, agent, or freemen, shall think fit, upon paying to such mayor, bailiff, sheriff, town clerk, or other officer, a reasonable charge for writing the same; and such books and papers shall, if demanded by such candidate, agent, or freemen, be produced by such mayor, bailiff, sheriff, town clerk, or other officer, at every election, and be referred to, in case any dispute shall arise touching the right of any person to give his vote thereat ; and if such mayor, bailiff, sheriff, town clerk, or other officer, shall refuse or deny such candidate, agent, or freemen, the inspection of such books and papers, or to have copies or minutes thereof, or shall refuse or neglect to produce such books and papers at any election, if demanded and paid for in the manner hereinbefore set forth, such mayor, bailiff, sheriff, town clerk, or other officer, shall, for every such offence, forfeit and pay the sum of one hundred pounds to him, her, or them, who shall inform and sue for the same.

5. And

5. And be it further enacted by the authority aforesaid, That all forfeitures or penalties laid or imposed by this act shall be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, wherein no essoin, protection, wager of law, or more than one imparlance shall be allowed.

The penalties may be recovered with full costs of suit;

6. Provided always, and it is hereby further enacted and declared, by the authority aforesaid, That no person shall be liable to any forfeiture or penalty by this act laid or imposed, unless prosecution be commenced within one year after such forfeiture or penalty shall be incurred.

provided the prosecution be commenced within a year.

7. And be it further enacted by the authority aforesaid, That the returning officer shall read, or cause to be read openly, this act, at the time of election of members to serve in parliament for cities, towns, ports, or boroughs, where the right of election is in the whole, or in part, in freemen as aforesaid, immediately after the reading of the act passed in the 2d year of his late majesty's reign, intituled, An act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament.

This act to be openly read by the returning officer, at all elections by freemen, immediately after act 2 G. 2.

8. And be it further enacted by the authority aforesaid, That nothing in this act shall extend, or be construed to extend, to the cities of *London* or *Norwich*.

This act not to extend to *London* or *Norwich*.

IV. Oaths.

"I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty king George.

Oath of allegiance: Vide 1 G. 1. st. 2. c. 13.

So help me God."

L 1 2

"I, A. B.

Oath of supremacy.

1 G. 1. ft. 2. c. 13.

"I, A. B. do swear, that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm.

So help me God."

Declaration to be made by Quakers, instead of the two preceding oaths.
3 G. 1. c. 6.

"I, A. B. do solemnly and sincerely promise and declare, that I will be true and faithful to king George; and do solemnly, sincerely, and truly profess, testify, and declare, that I do from my heart abhor, detest, and renounce, as impious and heretical, that wicked doctrine and position, that princes excommunicated or deprived by the pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, that no foreign prince, person, prelate, state, or potentate, hath or ought to have any power, jurisdiction, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm."

Oath of abjuration. 6 G. 3. c. 53.

"I, A. B. do truly and sincerely acknowledge, profess, testify, and declare in my conscience, before God and the world, that our sovereign lord king George is lawful and rightful king of this realm, and all other his majesty's dominions thereunto belonging. And I do solemnly and sincerely declare, that I do believe in
my

my conscience, that not any of the descendants of the person who pretended to be prince of Wales during the life of the late king James the second, and since his decease pretended to be and took upon himself, the style and title of king of England, by the name of James the third, or of Scotland by the name of James the eighth, or the style and title of king of Great Britain, hath any right or title whatsoever, to the crown of this realm, or any other the dominions thereunto belonging: And I do renounce, refuse, and abjure any allegiance or obedience to any of them. And I do swear, that I will bear faith and true allegiance to his majesty king George, and him will defend to the utmost of my power, against all traiterous conspiracies and attempts whatsoever which shall be made against his person, crown, or dignity. And I will do my utmost endeavour to disclose and make known to his majesty, and his successors, all treasons and traiterous conspiracies which I shall know to be against him or any of them. And I do faithfully promise, to the utmost of my power, to support, maintain, and defend the succession of the crown, against the descendants of the said James, and against all other persons whatsoever; which succession, by an act, intituled, *An act for the further limitation of the crown, and better securing the rights and liberties of the subject*, is and stands limited to the princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body, being protestants. And all these things I do plainly and sincerely acknowledge and swear, according to these express words by me spoken, and according to the plain and common sense

and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a christian.

So help me God."

Declaration or affirmation to be made by Quakers, instead of the oath of abjuration.

* I, A. B. do solemnly, sincerely, and truly acknowledge, profess, testify, and declare, that king George is lawful and rightful king of this realm, and of all other his dominions and countries thereunto belonging; and I do solemnly and sincerely declare, that I do believe, that not any of the descendants of the person who pretended to be prince of Wales, during the life of the late king James the second, and since his decease pretended to be and took upon himself the style and title of king of England, by the name of James the third, or of Scotland by the name of James the eighth, or the style and title of king of Great Britain, hath any right or title whatsoever to the crown of this realm, or any other the dominions thereunto belonging; and I do renounce and refuse any allegiance or obedience to any of them. And I do solemnly promise, that I will be true and faithful, and bear true allegiance to king George, and to him will be faithful against all treacherous conspiracies and attempts whatsoever which shall be made against his person, crown, or dignity. And I will do

* By the 8 Geo. 1. c. 6., Quakers were allowed to take the effect of the abjuration oath, according to the form therein prescribed; but when the oath of abjuration was altered by the 6 Geo. 3. c. 53. on the death of the pretender, no provision was made for altering the Quakers' affirmation or declaration conformable thereto. The form, however, will be as here given.

my best endeavour to disclose and make known to king George, and his successors, all treasons and traiterous conspiracies which I shall know to be against him or any of them. And I will be true and faithful to the succession of the crown, against the descendants of the said James, and against all other persons whatsoever, as the same is and stands settled by an act, intituled, *An act declaring the rights and liberties of the subject, and settling the succession of the crown*, to the late queen Anne, and the heirs of her body, being protestants; and as the same, by one other act, intituled, *An act for the further limitation of the crown, and better securing the rights and liberties of the subject*, is and stands settled and entailed, after the decease of the said late queen; and for default of issue of the said late queen, to the late princess Sophia, electress and duchess dowager of Hanover, and the heirs of her body being protestants. And all these things I do plainly and sincerely acknowledge, promise, and declare, according to these express words by me spoken, and according to the plain and common sense and understanding of the same words, without any equivocation, mental evasion, or secret reservation whatsoever. And I do make this recognition, acknowledgment, renunciation, and promise, heartily, willingly, and truly.

V. Member's qualification, and notice on questioning same.

The lands, tenements, and hereditaments, Qualification.
whereby I make out my qualification to serve
in the present parliament, do lie in the parishes

of A. and B. in the county of C.; and in the parishes of D., E., and F. in the county of G.; and I do declare my estate in the same to be of the annual value of [if a knight of the shire 600 l.; and if a citizen or burghers 300 l.], above reprises.

H. I.

Notice.

To A. B., Esquire, a petitioner to the honourable house of commons, complaining of an undue election for the borough of C.

Pursuant to a resolution of the house of commons of the 21st of November 1717, you are hereby required to give to and leave with the clerk of the house of commons, a rental or particular, signed by you, of the lands, tenements, and hereditaments whereby you make out your qualification to serve in parliament; and if you have not been in possession thereof for three years before the late election, you are to insert, from what person, and by what conveyance, or act in law, you claim and derive the same; and also the consideration, if any paid, and the names and places of abode of the witnesses to such conveyance and payment.

D. E.

APPENDIX.

521

VI. List of objections to county voters.

Bedfordshire.

A list of voters for A. B. objected to by C. D.

Manstead hundred.

Freeholder.	Place of abode.	Where the estates are situate, in right of which the pretended votes were given, or supposed to be given.	Objections.
1. A. B.	Everholt.	Everholt.	No freehold. Not worth 40s. a year, clear of all rents and charges. No freehold as described on the poll.
2. C. D.	Ivinghoe.	Eaton Bray.	Not assessed to the land-tax. Not in possession 12 months before the election. Mortgaged or otherwise incumbered. Not conveyed to the voter 12 months before the election.
3. E. F.	Barton.	Barton.	Deputy post-master. Employed under the post-masters general in collecting or managing the revenues of the post office, or some part thereof. Employed in collecting the duties on windows and houses.
4. G. H.	Flitton.	Flitton.	No certificate of rent charge or annuity entered, or the memorial thereof registered with the clerk of the peace.
5. I. K.	London.	Luton.	A foreigner.

*VII. Appointments and notice relative to ; with
the recognizance to be entered into by
petitioners and their sureties.*

Mercurii, 1^o die Decembris 1790.

Speaker's ap-
pointment of
examiners.
Vide 28 G. 3.
c. 52.

WHEREAS a petition of A. B. Esq. complaining of an undue election and return for the borough of L. in the county of H. was this day presented to the house of commons ; now I the right honourable Henry Addington, speaker of the house of commons, in pursuance of an act passed in the 28th year of the reign of his present majesty, intituled, *An act for the further regulation of the trials of controverted elections or returns of members to serve in parliament*, do hereby nominate and appoint John Ley, Esq. clerk-assistant of the house of commons, and Thomas Walker, Esq. one of the masters of the high court of chancery, to examine into the sufficiency of the sureties to be named in the recognizance to be entered into before me by the said A. B. Esq. in pursuance of the said act ; and to report their judgment to me upon the sufficiency of such sureties.

Henry Addington, speaker.

Appointment of
the day and
hour by the
examiners.

By virtue of Mr. speaker's order (of which the above is a copy), and on the application of the agent for A. B. Esq. the petitioner therein mentioned, we do appoint Monday next the sixth day of this instant December, at two of the

the clock in the afternoon, in one of the committee-rooms belonging to the house of commons, for the examination of the sureties referred to in the said order; of which due notice is to be given, according to the resolution of the house of commons of the 11th February 1789. Dated this second day of December 1790.

John Ley.
Thomas Walker *.

House of Commons.

TAKE notice, that the examiners of the sufficiency of sureties, appointed by the right honourable the speaker of the house of commons, in the cause of the petition of A. B. Esq. presented to the house of commons on the first day of December instant, complaining of an undue election and return for the borough of L. in the county of H. pursuant to an act of parliament in that case made and provided, have appointed Monday next the sixth day of this instant December, at two of the clock in the afternoon, in one of the committee-rooms belonging to the house of commons, for the purpose of examining the sufficiency of the sureties to be named in the recognizance to be entered into in respect of the said petition on behalf of the said A. B. And take further notice, that the names of the

Notice of the names, &c. of sureties, as directed by the order of the 11th Feb. 1789.

* This appointment is procured on application to Mr. Arthur Benson at the house of commons, the clerk to the examiners, who will give instructions as to the proceedings before the examiners.

sureties

APPENDIX.

sureties to be named in such recognizance are C. D. of Billiter-square in the city of London, merchant, and E. F. of St. James's street, Westminster, in the county of Middlesex, gentleman. Dated the sixteenth * day of December one thousand seven hundred and ninety.

G. H. agent for the petitioner.

To

Recognizance,
as given in the
schedule to the
28 G. 3. c. 52.

“ BE it remembered, that on the day of
 in the year of our Lord
before me A. B. *speaker of the house of commons*
[or *one of his majesty's justices of the peace for*
the county of], came C. D. E. F. and
J. G. and severally acknowledged themselves
to owe to our sovereign lord the king the follow-
ing sums; that is to say, the said C. D. the sum
of two hundred pounds, and the said E. F. and
the said J. G. the sum of one hundred pounds
each, to be levied on their respective goods and
chattels, lands and tenements, to the use of our
said sovereign lord the king, his heirs and suc-
cessors, in case the said C. D. shall fail in per-
forming the condition hereunto annexed.

The condition of this recognizance is, that if
the said C. D. shall duly appear before the
house of commons, at such time or times
as shall be fixed by the said house for taking
into consideration the petition signed by the

* Two whole days are to intervene between the service of the notice,
and the day appointed for the examination of the sureties.

said

said C. D. complaining of an undue election or return for the of
 [Here specify the county, city, borough, or district of burghs]; or, complaining that no return has been made for the said of within the time limited by act of parliament; or, that the return made for the said of is not a return of a member or members according to the requisition of the writ; and shall appear before any select committee which shall be appointed by the house of commons for the trial of the same; and shall renew his said petition in every subsequent session of this present parliament, until a select committee shall have been appointed by the said house for the trial of the same, or until the same shall have been withdrawn by the permission of the said house; then this recognizance to be void, otherwise to be of full force and effect."

VIII. Warrants and orders for witnesses, papers, and records.

WHEREAS, by an order of the house of commons, the matter of the petition of A. B. Esq. and also of the petition of the several persons whose names are thereunto subscribed, on behalf of themselves and others, being lawful electors of the borough of L. in the county of H. severally complaining of an undue election and return for the said borough of L. are appointed to be taken into consideration

Speaker's warrant for witnesses.

APPENDIX.

ation on Tuesday the fifteenth day of March next, at three of the clock in the afternoon; these are therefore to require you, C. D., E. F., G. H., and J. K., and each and every of you, to be and appear at the bar of the said house, upon Tuesday the said fifteenth day of March next, at three of the clock in the afternoon of the same day, to receive and obey such further order as the said house shall make concerning the said petitions, as you will each of you answer the contrary at your perils. Given under my hand the seventeenth day of February one thousand seven hundred and ninety-one.

Henry Addington, speaker.

Speaker's warrant for public papers and records.

WHEREAS, by an order of the house of commons, the matter of the petition of A. B. Esq. and also of the petition of the several persons whose names are thereunto subscribed, on behalf of themselves and others, being lawful electors of the borough of L. in the county of H. severally complaining of an undue election and return for the said borough of L. are appointed to be taken into consideration on Tuesday the fifteenth day of March next, at three of the clock in the afternoon; these are therefore to require you, C. D. town-clerk of the said borough of L. and E. F. vestry-clerk of the parish of L. and such other person and persons as have in his, her, or their custody or power, the rates or assessments made for the relief of the poor of the said parish, and the public books, public papers, and public writings of and belonging to the said parish, to permit the said A. B. Esq.

or

or his agent or agents, to inspect the same, and take such notes and copies thereof as he or they shall think fit. And that you the said C. D. town-clerk, and E. F. vestry-clerk, and the other persons aforesaid, or some one for you, do attend the house of commons upon Tuesday the said fifteenth day of March next, at three of the clock in the afternoon of the same day, with such of the said rates or assessments, public books, public papers, and public writings of and belonging to the said parish as aforesaid, as he the said A. B. Esq. or his agent or agents, shall require and give notice to be produced at the hearing of the matter of the said petitions; as you the said C. D. town-clerk, and the said E. F. vestry-clerk, and the other persons aforesaid, will answer the contrary at your perils. Given under my hand the seventeenth day of February one thousand seven hundred and ninety-one.

Henry Addington, speaker.

On the last warrant there must be the following appointment indorsed:

I do hereby appoint L. M. of the Inner Temple, London, gentleman, and N. O. of L. in the county of H. gentleman, jointly and severally my agents and agent for the purposes of the within order. As witness my hand this eighteenth day of February one thousand seven hundred and ninety-one.

A. B.

Lunæ,

Chairman's
order for wit-
nesses, papers,
&c.

Lunæ, 11^o die Februarii 1793.

At the committee on S. election :

The honourable E. I. in the chair.

Ordered,

That T. S. Esq. do attend the said committee forthwith *.

(Signed) E. I.

IX. Acts for regulating elections in London, Norwich, and Coventry.

London,
11 G. 1. c. 18.

ANNO 11^o GEORGII I. CAP. 18.

" An act for regulating elections within the city of London, and for preserving the peace, good order, and government of the said city.

Whereas of late years great controversies and dissentions have arisen in the city of London, at the elections of citizens to serve in parliament, and of mayors, aldermen, sheriffs, and other officers of the said city ; and many evil-minded persons, having no right of voting, have unlawfully intruded themselves into the assemblies of the citizens and presumed to give their votes at such elections, in manifest violation of the rights and privileges of the citizens, and of the freedom of their election, and to the disturbance of the public peace ; and whereas great numbers of wealthy persons, not free of the

* If it should be found necessary to have the chairman's order for papers and records, the form of the speaker's warrant before given for that purpose, will be easily altered to an order from the chairman of the committee.

said city, do inhabit and carry on the trade of
 merchandise and other employments within the
 said city, and refuse or decline to become free-
 men of the same, by reason of an ancient custom
 within the said city restraining the freemen of
 the same from disposing of their personal estates
 by their last wills and testaments; and whereas
 great dissensions have arisen between the alder-
 men and commons of the common-council of
 London, in or concerning the making or passing
 of acts, orders or ordinances in common-coun-
 cil, which, if not timely settled and determined,
 may occasion great obstructions of the public
 business and concerns of the said city, and create
 many expensive controversies and suits at law,
 and be attended with other dangerous conse-
 quences: Now, to the intent that suitable re-
 medies may be provided, for preserving the pri-
 vileges of the city of London and the freedom
 of election therein, and for settling the right of
 such elections, and putting a stop to the aforesaid
 controversies and dissensions and the ill conse-
 quences of the same, and that a constant supply
 may be had of able officers, capable of support-
 ing the dignity of, and maintaining good order
 and government within, that ancient, populous,
 and loyal city, which is of the greatest conse-
 quence to the whole kingdom; be it enacted,
 by the king's most excellent majesty, by and with
 the advice and consent of the lords spiritual and
 temporal, and commons, in this present parlia-
 ment assembled, and by the authority of the
 same, That, at all times from and after the first
 day of June 1725, upon every election of a
 citizen or citizens to serve for the said city of
 London in parliament, and upon all elections of

M m

mayors,

On all elections
 by the livery-
 men, and at the
 wardmotes,
 presiding officer
 to appoint a
 convenient
 number of
 clerks to take
 the poll, &c.

mayors, sheriffs, chamberlains, bridge-masters, auditors of chamberlains' and bridge-masters' accounts, and all and every other officer and officers to be chosen in and for the said city, by the livery thereof, and upon all elections of aldermen and common-councilmen, chosen at the respective wardmotes of the said city, the presiding officer or officers at such elections shall, in case a poll be demanded by any of the candidates, or any two or more of the electors, appoint a convenient number of clerks to take the same, which clerks shall take the said poll in the presence of the presiding officer or officers, and be sworn by such officer or officers, truly and indifferently to take the same, and to set down the name of each voter and his place of residence or abode, and for whom he shall poll, and to poll no person who shall not be sworn, or, being a *Quaker*, shall not affirm according to the direction of this act; and every person before he is admitted to poll at any election of any citizen or citizens to serve in parliament, or of any officer or officers usually chosen by the liverymen of the said city as aforesaid, shall take the oath hereinafter mentioned, or, being one of the people called *Quakers*, shall solemnly affirm the effect thereof; that is to say,

None to be polled who is not sworn.

Liveryman's oath at elections.

" You do swear, that you are a freeman of London, and a liveryman of the company of _____ and have so been for the space of twelve kalendar months; and that the place of your abode is at _____ in _____ and that you have not polled at this election.

So help you God."

And in case of any election of any alderman, or common-councilman, every person before he

is

is admitted to poll, shall take the oath herein-after mentioned, or, being one of the people called *Quakers*, shall solemnly affirm the effect thereof; that is to say,

“ You do swear, that you are a freeman of London, and an householder in the ward of and have not polled at this election.

Oath at ward-motes.

So help you God.”

And if any person or persons shall refuse or neglect to take the oaths hereby respectively appointed to be taken, or, being a *Quaker*, shall refuse or neglect to make such solemn affirmation as aforesaid, then and in every such case the poll or vote of such person or persons so neglecting or refusing shall be, and the same is hereby declared to be, null and void, and as such shall be rejected and disallowed.

On refusal to swear, poll to be rejected.

2. And be it further enacted by the authority aforesaid, That at all times from and after the said first day of June 1725, upon every election of such citizen or citizens, officer or officers, by the liverymen of the said city, and upon every election of such officer or officers, at any ward-mote of the said city as aforesaid, all and every person and persons, having a right to vote or poll at such election or elections, shall, before he be admitted to vote or poll thereat, (if required by any of the candidates, or any two or more of the electors,) first take the oaths in and by an act made in the first year of his majesty's reign, intituled, “ An act for the further security of his majesty's person and government, and the succession of the crown in the heirs of the late princess Sophia, being Protestants, and for extinguishing the hopes of the pretended prince of Wales, and his open and secret abettors,” ap-

The oaths to be taken, if required, as appointed by 1 G. 1. st. 2. c. 13.

pointed to be taken, or, being one of the people called *Quakers*, shall, if required as aforesaid, solemnly affirm the effect thereof; and if any person or persons shall, being required thereunto as aforesaid, refuse or neglect to take the said oaths by the said act appointed to be taken, or to affirm the effect thereof as aforesaid, that then the poll or vote of such person or persons so neglecting or refusing shall be, and the same is hereby declared to be, null and void, and as such shall be rejected and disallowed; and the presiding officers at all and every the respective elections aforesaid, and such sworn clerks as shall be by them appointed, are hereby respectively authorised and empowered to administer the above-mentioned oaths and affirmations; and if any such presiding officer or officers, sworn clerk or clerks, shall neglect or refuse so to do, or shall otherwise offend in the premises, contrary to the true intent and meaning of this act, every such officer and sworn clerk, shall, for every such offence, forfeit the sum of sixty pounds, of lawful money of Great Britain, besides costs of suit.

Presiding officer
and sworn clerk
to administer
the oaths, on
penalty of 60 l.

3. And it is hereby further enacted, That if any person or persons shall wilfully, falsely, and corruptly take the said oaths or affirmations set forth and appointed in and by this act, or either of them, and be thereof lawfully convicted by indictment or information, or if any person or persons shall corruptly procure or suborn any other person to take the said oaths or affirmations, or either, whereby he shall wilfully and falsely take the said oaths or affirmations, or either of them, and the person so procuring or suborning shall be thereof convicted by indictment or information; every person so offending shall, for every

every such offence, incur and suffer such penalties, forfeitures, and disabilities as persons convicted of wilful and corrupt perjury, at the common law, are liable unto.

Penalty on
falsely taking
the oaths, or
suborning.

4. And, to the intent that the poll at every such election may be expeditiously and duly taken, be it further enacted by the authority aforesaid, That if a poll shall be demanded at any of the elections before mentioned, after the said first day of June 1725, the presiding officer or officers at such elections shall begin such poll the day the same shall be demanded, or the next day following at the farthest, unless the same shall happen on a *Sunday*, and then on the next day after, and shall duly and orderly proceed thereon from day to day (Sundays excepted) until such poll be finished; and shall finish the poll at elections by the liverymen within seven days, exclusive of Sundays, and the poll at the wardmotes within three days, exclusive of Sunday, after the commencing the same respectively; and shall, upon adjourning the poll on each day, at all and every the elections aforesaid, seal up the poll books with the seals and in the presence of such of the respective candidates or persons deputed by them as shall desire the same, and the said poll book shall not be opened again, but at the time and place of meeting, in pursuance of such adjournment; and after the said poll is finished, the said poll books, being sealed as aforesaid, shall within two days after be publicly opened at the place of election, and be duly and truly cast up; and within two days after such casting up, the numbers of the votes or polls for each candidate shall be truly, fairly, and publicly declared to the electors at the place of

Presiding officer
how to act,
if a poll be de-
manded.

When the poll
to be finished,
&c.

If a scrutiny be demanded, scrutineers not to exceed six on each side.

Scrutiny when to begin, and when to finish, on election by liverymen.

Scrutinies on elections at wardmotes.

election, by the officer or officers presiding at such election: And if a scrutiny shall, upon such declaration made, be lawfully demanded, the same shall be granted and proceeded upon, and the respective candidates shall immediately nominate to the presiding officer or officers at such elections, any number of persons qualified to vote at such elections, not exceeding six, to be scrutineers for or on behalf of the candidate or candidates on each side; to whom the presiding officer or officers at such election shall, within six days next after such scrutiny shall be demanded, upon request and at the charge of the candidate or candidates, or any of the scrutineers on his or their behalfs, deliver or cause to be delivered to him or them a true copy, signed by such officer or officers, of the poll taken at such election: And all and every the scrutinies, to be had or taken upon any election to be made by the liverymen of the said city, shall begin within ten days after the delivery of the copies of the said polls, and be proceeded on day by day (Sundays excepted), and shall be finished within fifteen days after the commencement of such scrutiny; and thereupon the presiding officer or officers shall, within four days after the finishing such scrutiny, publicly declare at the place of such election, which of the candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny: And on the election of any officer or officers at the respective wardmotes of the said city, if a scrutiny be demanded, the candidates, or scrutineers nominated on their behalf respectively, shall, within ten days next after the receipt of the copy or copies of the

the polls taken at such election, deliver or cause to be delivered to the presiding officer or officers, the names, in writing, of the several persons who have polled in the said election, against whose votes they shall object, with the particular objections against each respective name; and the presiding officer or officers shall thereupon within three days then next following, at the request and charges of any candidate or candidates, or the scrutineers named on his or their behalfs, deliver or cause to be delivered to him or them, one or more true copy or copies (signed as aforesaid) of the paper containing such names and objections as aforesaid; and the said presiding officer or officers, within ten days then next following (exclusive of Sundays), after having fully heard such of the said candidates as shall desire the same, or some person appointed by him or them, touching such objections, shall, at or in the place of election, openly and publicly declare which of the said candidates is or are duly elected, and the number of legal votes for each candidate appearing to him or them upon such scrutiny; and if the said presiding officer or officers, or any other person or persons, shall offend in the premises, every such offender shall forfeit, for every such offence, the sum of two hundred pounds of lawful money of Great Britain, with full costs of suit, over and above all other penalties and forfeitures inflicted by any other act or acts of parliament.

5. And be it further enacted by the authority aforesaid, That after any election made and scrutiny taken as is hereinbefore provided and directed, the presiding officer or officers at such election and scrutiny shall deliver, under his or

M m 4

their

True copies of
the objections
against the poll-
ers.

Penalty 200l.
&c. with costs,
besides all other
penalties.

A true list to
be given of the
voters disal-
lowed.

their hand or hands, a true list of the voters by him or them disallowed upon such scrutiny, to any of the candidates who shall, upon the final declaration of the election as aforesaid, demand the same within six days after such demand made, such candidate paying for the same: Provided always, That no such list as is hereby directed to be given, nor any thing therein contained, shall be admitted to be given in evidence on any action or occasion whatsoever.

Mayor to issue precepts to the companies to bring in lists.

6. And be it further enacted by the authority aforesaid, That the mayor of the city of London for the time being, upon request to him made by any candidate or candidates, his or their agent or agents, at any election of a citizen or citizens to serve in parliament for the said city, or of a mayor or any other officer or officers to be chosen by the liverymen thereof, where a scrutiny is demanded and granted, shall issue his precepts as has been usual, requiring the masters and wardens of the livery companies of the said city respectively, to cause their clerks forthwith to return to him two true lists of all the liverymen of their respective companies; and the said clerks shall return such their respective lists, upon oath, within three days after the receipt of any such precepts; one of which lists so returned, the said mayor shall, and he is hereby required forthwith to deliver, or cause to be delivered, to the candidate or candidates on each side at such election, or to his or their agent or agents respectively.

* * * * *

Persons excluded from voting.

14. And it is hereby further enacted, That no person or persons whatsoever shall, from and after the said first day of June 1725, have any right or title to vote at any election of a citizen
or

or citizens to serve in parliament for the said city, or of any mayor or other officer or officers to be chosen by the liverymen thereof, who have not been upon the livery by the space of twelve kalendar months before such election, and who shall not have paid their respective livery fines, or who having paid the same, shall have received such fines back again in part or in all, or shall have had any allowance in respect thereof; and no person or persons whatsoever shall have any right to vote at any election of a citizen or citizens to serve in parliament, or of any mayor, alderman, or other officer or officers of or for the said city, or any the wards or precincts thereof, who have, at any time within the space of two years next before such election or elections, requested to be, and accordingly have been, discharged from paying to the rates and taxes to which the citizens of London inhabiting therein are or shall be liable as aforesaid, or any of them, or who have within the time aforesaid had or received any alms whatsoever; and the vote of every such person shall be void,

* * * * *

20. And be it further enacted by the authority aforesaid, That all and every the forfeitures hereby enacted, or inflicted, shall be distributed in the manner following; that is to say, one-third part thereof to the king's most excellent majesty; one-third part thereof to the chamberlain of the said city, to the use of the mayor, commonalty, and citizens of the said city; and the remaining third part thereof to him or them that will sue for the same within six kalendar months next after the same shall be incurred, to be recovered by action of debt, bill, plaint, or information,

in

Forfeitures how
to be distributed.

in any of his majesty's courts of record at Westminster, wherein no effoin, privilege, protection, or wager of law, shall be allowed, nor any more than one imparlance."

Norwich,
3 G. 2. c. 8.

ANNO 3^o GEORGH II. CAP. 8.

"An act for the better regulating elections in the city of Norwich, and for preserving the peace, good order, and government in the said city.

Whereas many unhappy controversies and dissensions have of late years arisen in the city of *Norwich*, at the elections of citizens to serve in parliament, and also of mayors, sheriffs, aldermen, and common-councilmen of and for the said city, touching the legality and validity of the votes of many persons who in such elections have offered to vote; and whereas the time appointed by the charters of the said city is not sufficient to elect so great a number of common-councilmen for each great ward, as are thereby yearly directed to be chosen when such elections happen to be controverted; and whereas great differences and dissensions have arisen between the mayor, sheriffs, and aldermen, and the commons of the common-council of the said city, in or concerning the making or passing of acts, orders, or ordinances, in common-council, or assembly of the representative body of the said city, which have often obstructed the public business and concerns thereof: Now, to the intent that a stop may be put to all such controversies and dissensions as aforesaid, touching the legality of voters, that the number of common-councilmen may be yearly elected, and that the public business of the

the said city may not be obstructed, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from and after the twenty-fifth day of *April*, one thousand seven hundred and thirty, every person, before he is admitted to poll as a freeman at any election of a citizen or citizens to serve for the said city of *Norwich* in parliament, shall take the oath herein first after mentioned, or, being one of the people called *Quakers*, solemnly affirm the effect thereof; that is to say,

"You do swear that you are, and for twelve kalendar months have been, admitted a freeman of the city of *Norwich*, and that you have not been before polled at this election, or [*in case of an election for two citizens*] but for one person. So help you God."

Freemen's oath
at elections of
parliament-
men.

* * * * *

And if any person or persons shall refuse or neglect to take the oaths hereby respectively appointed to be taken, or, being a *Quaker*, shall refuse to make such solemn affirmations as aforesaid, (which oaths or affirmations the mayor for the time being, or his deputy, or such sworn clerks as shall by him or his deputy be appointed, are hereby authorised to administer,) then, and in every such case, the poll or vote of such person or persons so neglecting or refusing shall be, and the same is hereby declared to be, null and void, and as such shall be rejected and disallowed.

Refusing to
swear the vote
or poll dis-
allowed.

And be it enacted by the authority aforesaid, That in every election which shall be for a citizen or citizens to serve for the said city

One of the
checks, &c.
may go into the
prisons to take
the votes there.

city of *Norwich* in parliament, or for a mayor, sheriff, alderman, or common-councilmen, of the said city, one of the checks, a swearer, and a clerk belonging or appertaining to the poll book of any candidate or candidates at such election, shall be admitted to go into the common gaol or any other prison of the said city, to take the votes of such freemen confined therein for debt, as shall have a right to vote at such election, and the sheriffs, gaoler, or prison-keepers for the time being, are hereby required to admit such check, swearer, and clerk, to go into the said common gaol and other prisons, and to take the votes of such prisoners as aforesaid, upon the penalty of fifty pounds of lawful money of *Great Britain*, upon every refusal to admit such check, swearer, and clerk, as aforesaid.

Punishment
for perjury.

* * * * *

And be it hereby further enacted, That if any person or persons shall wilfully, falsely, and corruptly, take the said oaths or affirmations set forth and appointed to be taken in and by this act, or any of them, and be thereof lawfully convicted by indictment or information, every person so offending shall, for every such offence, incur and suffer such penalties, forfeitures, and disabilities, as persons convicted of wilful and corrupt perjury, at the common law, are liable unto.

Coventry,
21 G. 3. c. 54.

ANNO 21^o GEORGII III. CAP. 54.

“ *An act for the better regulating elections of citizens to serve in parliament for the city of Coventry.*

Whereas the right of election of citizens to serve in parliament for the city of *Coventry* is,
by

by the last determination of the house of commons, of the twentieth day of November 1722, declared to be in such freemen as have served seven years apprenticeship to one and the same trade in the said city, or the suburbs thereof, and do not receive alms or weekly charity, such freemen being duly sworn and enrolled; and whereas great frauds and abuses were committed, in clandestinely admitting persons, having no such right to the freedom of the city of *Coventry*, during the last election of members to serve in parliament for the said city, in order to influence the said election, to the great infringement of the rights of the true electors of the said city, and in violation of the freedom of elections: To prevent such practices for the future, be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That, from and after the passing of this act, an open council shall be held at *Saint Mary's Hall* in the said city, on the first and last *Tuesday* in every kalendar month, for the purpose, on the first *Tuesday* in each month, of receiving and proclaiming aloud the names of every person or persons who shall then present, or cause to be presented, an account in writing of the particulars of his or their claim to the freedom of the said city, and for the purpose, on the last *Tuesday* in each month, of admitting to the freedom of the said city such person or persons as shall then appear and claim to be so admitted, he or they first verifying upon oath the particulars of his or their claim delivered in at the preceding council; and that the council which shall

be

An open council to be held at *St. Mary's Hall*, on the first and last *Tuesday* in every month.

be holden on the first *Tuesday* in each month shall assemble at ten in the morning, and continue open a convenient time, for receiving such claims as shall then be preferred; and the council which shall be holden on the last *Tuesday* in each month shall continue open from the hour of ten in the morning till three o'clock in the afternoon of the same day, or for such shorter time as shall be found sufficient for hearing and determining any claims which shall then have been preferred; and if any such claims shall then remain unheard or undetermined, the said council shall be adjourned from day to day, and continue open on each day in manner aforesaid, for hearing and determining such claims.

Limitation of the expence of taking up the freedom.

2. And be it further enacted by the authority aforesaid, That, from and after the passing of this act, no greater fee than three shillings, over and above the expence of the necessary stamps, shall be demanded or taken of any person or persons who shall be so admitted to his or their freedom at any such council.

Particulars to be observed by those who take it up.

3. And be it further enacted by the authority aforesaid, That no person shall be admitted to the freedom of the said city, at any council to be held for that purpose, who shall not produce evidence of regular indentures or deeds of apprenticeship for seven years, as required by the resolution aforesaid; and who shall not also declare upon oath the name or names of his master or masters, the trade to which he served under him or them, the place of his or their residence during the time he served, and of his own residence at the time of his claiming to be admitted to the freedom of the said city; and that it shall be lawful for such persons, so claiming

ing their freedom as aforesaid, to come to such council attended with their agents, who shall be present at their admission, if they so require it; and such council are hereby authorised and required to administer such oath as aforesaid.

4. And be it further enacted by the authority aforesaid, That the town clerk shall enter all the above particulars in the admission book, under the name of each person who is admitted to the freedom of the said city; and that the said town clerk and the mayor, and each of the members composing the council at which such freemen shall be admitted, shall openly subscribe their names to the said entries.

Town clerk to enter the above particulars in a book.

5. And be it further enacted by the authority aforesaid, That lists of the names of all persons claiming to be admitted freemen, and of all the freemen admitted at any council to be held in the manner aforesaid, shall be made out in writing, and signed by the town clerk, and be pasted or fixed upon the doors of all the churches in *Coventry*, within twenty-four hours after the holding of such council.

Lists of the names of all the freemen, &c. admitted, to be pasted on the church doors.

6. And be it further enacted by the authority aforesaid, That no council shall be held for receiving claims of persons claiming to be admitted to the freedom of the said city after the day on which notice shall be given by the sheriff or sheriffs, according to the statute, of any election for a member or members to serve in parliament for the said city, till after the final close of every such election.

Councils not to be held during a certain time specified.

7. And be it further enacted by the authority aforesaid, That, at every election of members to serve in parliament for the said city, every person who shall come to poll at such election shall,

Electioners to be sworn.

shall, if required by any candidate at such election, or by any two or more persons having a right to vote at such elections, previous to his being permitted to poll, take the following oath, or, being one of the persons called *Quakers*, shall solemnly affirm the effect thereof; that is to say,

“You do swear, that your name is A. B., and that you have been admitted to the freedom of the city of *Coventry* under indentures, or deeds of apprenticeship, and that you have served seven years apprenticeship to one and the same trade in the said city, or the suburbs thereof; and that you are of the age of twenty-one years, or upwards; and have not been polled before at this election. So help you God.”

Which oath the returning officer or officers, or his deputy, is hereby empowered to administer.

Penalty on persons guilty of perjury.

8. And be it further enacted by the authority aforesaid, That all persons who shall be guilty of wilful and corrupt perjury, in consequence of any oath which they shall have taken by the direction of this act, shall, on conviction thereof, incur and suffer the like pains and penalties to which any other person convicted of wilful and corrupt perjury is liable by the laws and statutes of this realm.

Penalty on returning officer for admitting persons to poll without being sworn;

9. And be it further enacted by the authority aforesaid, That if the returning officer or officers, at any election of a member or members to serve in parliament for the said city, shall wilfully admit any person to poll at such election without his having first taken the above-mentioned oath, if required so to do, in manner aforesaid, the said returning officer or officers shall, for every such offence, forfeit and pay the sum

sum of one hundred pounds to him, her, or them, who shall sue for the same.

10. And be it further enacted by the authority aforesaid, That if the mayor, and the other members composing any council to be held for the purpose of proclaiming the persons presenting accounts of their claim to the freedom of the said city, or for the purpose of admitting such persons to the freedom of the said city, shall refuse to proclaim, or to admit such person or persons as shall come and prove their titles according to the provisions of this act, they shall, for every such offence, forfeit and pay the sum of one hundred pounds.

and on members
of the council
for refusing to
admit electors,
&c.

11. Provided always, That if any doubts shall arise as to the legality of the titles so sworn to, it shall and may be lawful for the said council to hear witnesses, and admit evidences to disprove the same.

Proviso.

12. And be it further enacted by the authority aforesaid, That if the town clerk shall neglect to make the proper entries, or shall make any false and fraudulent entries in the admission book: or if he shall neglect to make out and sign the lists of the freemen admitted, and cause them to be pasted or fixed on the doors of the churches in manner hereinbefore directed; or if he shall make out, sign, or cause to be pasted or fixed on the doors of the churches as aforesaid, any false or fraudulent list, he shall, for every such offence, forfeit the sum of ten pounds.

Penalty on
town clerk for
making fraudulent
entries, &c.

13. Provided also, and it is hereby enacted and declared, That this act shall not extend, nor be construed to extend, to any freemen of the said city but such as have a right to vote in the

To what free-
men this act
shall extend.

N n

election

election of members to serve in parliament for the said city.

Election booth
where to be
erected.

14. And be it further enacted, That the returning officer or officers shall, at all future elections of citizens to serve in parliament for the said city, cause the booth for holding such election to be erected in the widest and most convenient part of the open market-place called Cross-cheaping, not contiguous to any other building.

Penalties how
to be recovered.

15. And be it further enacted by the authority aforesaid, That all penalties laid or imposed by this act shall be recovered, with full costs of suit, by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, wherein no essoin, protection, wager of law, or more than one imparlance, shall be allowed.

Limitation of
actions.

16. Provided always, and it is hereby further enacted and declared by the authority aforesaid, That no person shall be liable to any penalty by this act laid or imposed, unless prosecution be commenced within one year after such penalty shall be incurred.

Public act.

17. And be it further enacted by the authority aforesaid, That this act shall be deemed, adjudged, and taken to be a public act; and be judicially taken notice of as such, by all judges, justices, and other persons whomsoever, without specially pleading the same.

Deeds or indentures of apprenticeship, &c. shall be registered by the town clerk.

18. And be it further enacted by the authority aforesaid, That the dates of all deeds or indentures of apprenticeship, together with the names of the parties, and their places of abode, which, from and after the passing of this act, shall be made and executed between any person

or

or persons residing in the said city of *Coventry*, or the suburbs thereof, and his, her, or their apprentice or apprentices, under which such apprentice or apprentices may hereafter have a right to be admitted to the freedom of the said city, shall be registered in a book to be kept for that purpose by the town clerk of the same city for the time being, within the space of six kalendar months next after the execution thereof; which the said town clerk is hereby required to register, and on such deeds or indenture to indorse a certificate of such register; and in default thereof, such deeds and indentures shall, to all intents and purposes, be null and void."

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called *Punch* through the hole in
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BOOTHs.

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After the evidence to support the sitting member's case is gone through, the junior counsel on the same side sums it up 391

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counsel on the other side, the senior replies *P.* 391

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Where there are returns by different persons claiming to be returning officers, the person returned by

that officer, whom the committee determine to be the legal returning officer, is considered as the sitting member, and therefore the other party begins *P. 389. n.*

The minutes of the evidence given before a committee are copied for the agents, and delivered out daily *390. n.*

It was agreed that of the votes for the sitting member, "the entries respecting a certain number in the corporation book, and on the poll, agreed both in the names and descriptions." It was contended for the petitioner, that as there were such a number of persons of the same name in Wales, and his agents not being suffered to inquire into their identity during the poll, it was necessary for the sitting member's counsel to prove their identity: But it was held that the *onus* lay upon the petitioner *402*

Proof was given of the *possession* of voters, whose title was denied, as freeholders, copyholders, or leaseholders. This was *prima facie* evidence of their being freeholders; but it appeared by a cheque-book produced by the petitioners, that these persons had *claimed* as leaseholders, and had been refused as such. The question was, Which party should produce the leases? The sense of the committee seemed to be that the petitioners must produce them, which they did *403*

A voter was objected to as having no freehold, the petitioner's counsel read part of a will of the voter's father in which he gives his leasehold estates to the voter. Held, that the presumption was suf-

sufficient to put the sitting member
on proof of the voter's freehold

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Where a voter at the election takes
the freeholder's oath, it is sufficient
evidence to put the other party
under a necessity of producing
evidence to disqualify him in re-
spect to his freehold, and the
value thereof *ib.*

In the Bedfordshire case, the rule
formed for the manner of giving
evidence in those cases that arose
from a mistake of the voter's
name, or of the description of the
estate in the assessment, was,
"that the party objecting to the
vote must prove a *real* difference
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that on the poll" 405

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that the inhabitants, householders,
should have a legal settlement,
the committee held, that a man's
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tive to a subsequent one, unless
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time such vote was under confi-
deration, and special cause then
shewn *ib.*

A parchment, said to be a fine, was
produced, but not appearing to
be examined with the records,
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ing it to the committee 424

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to

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Some committees require all the deeds, papers, and writings, produced in evidence, to remain with the committee clerk till the report is made; but others will return them after the clerk has made a mark on them *459*

In the Downton case, the delivery of the deeds was claimed as a right, and they were ordered to be returned *ib.*

In the Gloster case, several deeds, &c. were produced, under a necessity to be immediately returned, whereupon the deposit of attested copies was allowed *ib.*

The duplicates of the land-tax assessments ordered to be deposited *ib.*

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The husband of a woman, who had estates devised to her *until* her daughter came of age, *then* part of them to her own use, and the daughter not being of age, he was held not to have such an estate as to entitle him to vote *ib.*

Neither has the husband of a woman under the following title: The estate had been devised to her and her former husband in joint tenancy, with remainder to her in tail. Previous to marriage, a deed was made in which the voter covenanted with a friend of her's R. V. not to intermeddle with the rents, &c. but that they should remain to the separate use of the wife, and be received by R. V. who should have the sole management of the estate 132

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But, where a person voted under a deed which conveyed to him an estate for the remainder of ninety-nine years as if a freehold, his vote was disallowed *ib.*

Where a person had been in possession of his estate thirty-four years; for the first ten years he had paid rent, but, since the owner not having been heard of, no rent had been demanded or paid. His vote was allowed *ib.*

A person voted for a windmill, which stood in a common field upon a plot of ground large enough to clear the sway of the wings, inclosed within a fence put up by the voter: It was fixed on a post on pattens, in a foundation of brick-work. No proof was brought to shew that it did, or did not belong to the voter. The vote was held good *ib.*

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- To

To entitle a person to vote, who has an inchoate right to his freedom, but neglects applying for his admission till it is too late to obtain a *mandamus*, proof must be given that he tendered his vote, that due application was made to be admitted, and that the voter possesses the qualifications entitling him to admission *P. 228*

Application on a Sunday to be admitted, when the election was on the Monday following, held such an application as to entitle him to vote *ib.*

So, in the same case, where application was made on the Saturday, and the voter died soon after the election, it was held good

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In the Derby case, the question was, whether the admissions were demanded of the proper persons, or in a proper manner, which depended on the legality of a by-law of the corporation *ib.*

Where a *mandamus* is depending at the election, and decided in favour of the voter before the committee are appointed; if the voter tendered his vote at the election, the committee will allow it *ib.*

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But in a subsequent case, they were not permitted to prove such declarations *P. 455*

Evidence was allowed to prove that a voter said to an agent of the sitting members, that he (the agent) knew that he (the voter) could not take the bribery oath, and that the agent said nothing to contradict it *ib.*

Such evidence allowed to affect the voter, but not to support any charge against the sitting members *ib.*

Agreed, in the case of Ivelchester, that evidence of the declarations of the voters who had acknowledged themselves to be bribed, could only be admitted to affect the voters, and not third persons *ib.*

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JOINTENANTS

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OPENING.

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 an

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unnecessary to bring any other
evidence of the tender than the
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objection was made by the other
side

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420

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TRUST ESTATE.

No person can vote for any trust estate or mortgage, unless in actual possession or receipt of the rents and profits. 7 & 8 W. 3. c. 25. s. 7. P. 134

Where a father devised his estate to trustees, to pay 6s. per week to J. his eldest son, an idiot; and the remainder to the second son, the voter, who was to be put into possession on giving security to pay the 6s. per week. When he voted, he had not given the security, nor was he in possession. It was held that the voter had no right, but that J. had *ib.*

Where a voter had sold the estate, but the purchaser executed a bond to permit him to receive the rents and profits for his life, his vote was disallowed 135

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 case, to waive the objections to
 witnesses on both sides, on the
 subject of wagers *ib.*
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 event of the petition, was ad-
 mitted to give evidence *ib.*

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Formerly every knight of the shire

was allowed 4*s.* by the day, and
 every citizen and burgess 2*s.*
 during the continuance of par-
 liament, and for so many days
 longer as they might reasonably
 return to their dwellings. 4 *Inst.*
 46. *P.* 53, *n.*

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Before the committee are chosen,
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 secretary, issues the necessary war-
 rants for witnesses, papers, and
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 A paper in general passed on the
 door of the committee-room to
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 rule,

rule, as to their proving the execution of deeds or writings

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The questions put to a witness, and his answers, are taken down in writing by the committee-clerk; and, in some cases, the minutes of their evidence are read over to them, to set right any mistakes made in taking it down *ib.*

After the examination, cross-examination, and re-examination of a witness, the committee put such questions as they think proper; or, if any new questions occur to the counsel, they suggest them to one of the committee, who will ask them of the witness *ib.*

In the Ivelchester case, it was made a rule, where one witness contradicted another, to call in such other, and confront them together *425*

A witness is not allowed to be called a second time to rectify his evidence *426*

The returning officer being called on the first day the committee sat, to produce the poll, the counsel on the other side proposed to cross-examine as to several points in the cause; but that was objected to, as anticipating the defence before the charge was established. The committee refused to let them cross-examine him at that time *427*

What is evidence of usage *ib.*

Select committee are empowered to send for witnesses; and persons disobeying a summons, or prevaricating, to be reported by the chairman. 10 G. 3. c. 16.

434

Witnesses not attending, or giving false evidence, may be committed by the committee into the custody of the serjeant at arms. 28 G. 3. c. 52. *P. 435*

Before the committee are chosen, the speaker issues the necessary warrants for witnesses; afterwards the chairman signs orders for that purpose *435, n.*

Who may be witnesses *ib.*

Infamous persons are excluded *436*

Who are infamous *ib.*

No person can prove himself infamous. *437*

Q^u. Whether a voter who has taken the bribery oath at the poll, is allowed to prove himself bribed *ib.*

Who are excluded from being witnesses, as wanting discretion *ib.*

Persons interested cannot be witnesses *ib.*

A returning officer may prove that he was compelled by force to make a false return *438*

A person acknowledging that, in the event of a new election arising out of the petitions, he should pay the expences of such new election, is incompetent to be a witness *ib.*

A witness may prove a title in himself, when he can neither get or lose by the event of the cause *ib.*

Where a voter had entered into articles to sell his estate to one R. but the articles were not carried into execution, R. was called as a witness, and allowed *439*

The grantor in a deed is not competent to prove it *ib.*

Petitioners cannot be witnesses *ib.*
But

But where there were petitions from two sets of voters, the one concluding thus; "that by these and other undue, corrupt, and illegal practices," the sitting member procured himself to be returned, &c.; the other containing only "other undue means." And the committee having determined that the charge of bribery was comprehended in "corrupt practices," a witness was called to prove bribery who had signed the latter petition, and he was allowed

P. 439

Where the question is, whether a certain description of persons have a right to vote; and a voter, on the *voire dire*, acknowledges himself to be of that description, he is inadmissible

440

An inhabitant who had been on the parish-books three years, allowed to prove the right in the inhabitants

ib.

A non-resident freeholder cannot prove that non-resident freeholders have a right

441

Nor one of the nine presiding stewards of Milborne-Port cannot prove the right in himself and the rest

ib.

A voter may be examined when his evidence only tends to narrow the right

ib.

As where the right is in inhabitants paying to church and poor in respect of their personal estates, and in such as pay in respect of their real estates, a voter on being called, who acknowledged himself to be an inhabitant of the first description, was allowed to prove that no out-voters polled in 1720

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So, an inhabitant of an old borough house was allowed to prove the right in the inhabitants of old borough houses, in exclusion of the rest

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Committees have varied as to allowing a voter to be examined to correct the poll-book as to his own vote

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A voter is competent to disprove his being bribed

445

Qu. Whether a person, having laid a wager, is incompetent

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456

Forms of warrants and orders for witnesses

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WOMEN

Cannot vote

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How writs issue on a general election

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ib.

Must issue with expedition, and be delivered to the proper officer

2

How writs issue on a vacancy during the sitting of the house

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the day he receives it P. 18
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THE END.

